ESSAYS

ON

MOHAMMADAN SOCIAL REFORM.

BY

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CONTENTS.

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NOTES

ON

MOHAMMADAN MARRIAGES AND DIVORCES.

1881-1882.

IF statistical knowledge is of any worth, the registration of marriages is likely to give a good deal of aid to the Government in administrative purposes. It is trying to obtain reliable statistics in regard to births and deaths, because such statistics are useful. The registration of marriages will be doubly useful—useful as supplying independent statistics and as supplying co-ordinate statistics.

The time is rapidly coming when some sort of indirect checks will have to be established against marriage. It is futile to say that the Government will not permit death from starvation among the people : it must have the means of adjusting the balance between population and subsistence. Unless the Government should take upon itself to put indirect checks upon marriage, it would be absurd for it to say that death from starvation must not occur.

It is not necessary for the present argument to state what those checks should be ; but the registration of marriages and births will give us the right experience : will shew how far such indirect checks might be applied without increasing illegitimate connections between the sexes. The security of person and property

ensured by the English Government—the gradual decay of military devastations—the control of epidemic mortality through medical doctors and dispensaries—the absence of every prudential check on marriage—all these circumstances have stimulated the inordinate growth of population, and have thus made famines more frequent during the last twenty years.

To prevent the rapid recurrence of these famines in future, it will soon become necessary to arrest the rapid multiplication of population. For this purpose we must devise some easy means of restraining indiscreet marriages. The registration system may, after the lapse of several years, be extended to the Hindus of Bengal'; and we shall then have a good machinery for collecting statistics of marriage. These statistics, aided by the statistics of birth and the census statistics, will, in time, enable us to devise indirect checks against improvident marriages and the inordinate increase of population.

For the sake of the Mohammadans themselves the registration of marriages is an absolute necessity. It is all very well for those who live in districts, with a small Mohammadan population, generally descended from immigrants from beyond the Sindh, to say, that the law is not wanted—or for those who live in towns, where the active competition of life obscures social phenomena, to feel indifferent about the law; but it is no exaggeration to say, that all over Northern, Central, and Eastern Bengal', the marriage bond is extremely loose among the lower orders, who are chiefly descend-

ed from native converts, and who form, probably, ninety-nine-hundredths of the whole Mohammadan population of the districts comprising the Presidency, the Raajshaahi, the Dhaaka, and the Chittagong Divisions. I have had experience of one or two districts in all these Divisions, and I can say without the least hesitation, that the looseness of the marriage tie among the lower classes is due partly to the facility with which the fact of marriage itself may be denied, partly to the facility with which a husband is able to divorce his wife, and partly to the facility with which women are remarried.

6 The Hindus and Mohammadans of Bengal', though they are now living together as neighbours for several generations, form two different societies, distinguished from each other by various characteristic features. The Hindu woman cannot be divorced, nor can she be remarried. Cases of adultery may not be unfrequent, but cases of enticement or seduction are rare, because there is no possibility of ever legalizing it by a marriage. The Mohammadan woman is easily divorced and easily remarried, and the hope of finishing the affair by a marriage makes enticement and seduction, a most frequent practice in those districts where no restriction is imposed upon the divorce or remarriage of women either by family custom or the opinion of the clan, by social rules or class feelings, by considerations of economy or domestic happiness.

The illegality of widow marriage among the Hindus f Bengal' has led to the development of what is

called Baishnavism — the degenerate descendant of Chaetan's Religious Communism, and now almost an organized system of prostitution and vice. The practice of the Mohammadans of Bengal' is, therefore, more consonant to reason and humanity. But the facility of divorce and the tendency of the Mohammadans of Eastern Bengal' towards polygamy have made the remarriage of women an evil, instead of a good to the Mohammadan community. For women are tossed and flung from one master to another with a rapidity and an indifference which make it almost a system of immorality hidden under a legal form.

Polygamy is an institution which prevails both among Hindus and Mohammadans; it enters largely into the composition of the social mechanism of India; and we must depend, therefore, upon the progress of our society in ideas and feelings for the eradication of the evil. But the power of indiscriminate divorce possessed by the Mohammadan husband, and its arbitrary exercise by the low and convert Mohammadans of Eastern Bengal', are repugnant to every notion of justice, and the physical and moral miseries which it causes loudly call for State interference.

It is a noteworthy fact, that the Mohammadan law, while it describes the various forms and modes of divorce with unnecessary and almost tautologous details, makes but the barest allusion to the grounds of divorce. If marriage is a civil contract, it must be

governed by the general law of contracts ; if it is a religious union, it must not be determined except upon moral and social grounds. No amount of religious bigotry should permit one party to terminate a contract without either the fault or the consent of the other. The question concerns the general principles of administration, and no divorce should, therefore, be allowed except upon adjudication by a Court of Justice, and except upon the grounds of unchastity and of continued refusal to cohabit. To make the principle of divorce fairer and less unequal, we must permit the wife to obtain judicial separation on the grounds of constant cruelty and of refusal to maintain.

If the state of Mohammadan public opinion does not warrant the adoption of these measures, the registration of divorces should be made compulsory. The objections to the compulsory registration of marriage do not apply to the compulsory registration of divorce ; but to make the marriage tie more durable among the low Mohammadans of Eastern Bengal', it is necessary to provide for the compulsory registration of marriages. The evidence of a marriage ceremony amongst them is merely oral, and the witnesses are men whom it is generally easy to buy over. The evidence to substantiate a plea of divorce is also procurable without much difficulty. The feeling, that the fact of marriage may be rebutted with so much ease and the plea of divorce established with so little trouble, makes seduction so painfully general in Eastern Bengal'.

The registration of marriages may be made compulsory either (*a*) by attaching direct penalties to the failure of parties or to the neglect of Mullas and Qhwondkaars, or (*b*) by attaching civil disabilities to suitors for any and all causes arising out of marriage, or to suitors for dower, maintenance, and conjugal rights. To impose penalties on the parties who contract a marriage would involve such a prying and irritating interference with the private affairs of the people, that no Government should attempt to undertake a measure of the kind. A strong and widespread disaffection will be the result of the oppression and hardships which are sure to accompany its enforcement.

But if, instead of punishing the contracting parties, we punish the Mulla or Qhwondkaar who performs the marriage ceremony, we are perhaps more likely to succeed; there must, however, be a large number of Mullas or Naayebs under each Kaazi so as to enable them to attend all marriages within their respective parishes. Appointed by a Government officer, they must convey to the people in their present state of civilization an idea of superior merit and superior position, and would be able, in a comparatively short time, to supplant all illiterate or self-constituted Qhwondkaars. This plan cannot be construed as even the semblance of interference with religion, and is calculated to attract the gradual sympathy of the people towards the registration of marriage.

3 These are forms of direct compulsion; the other two modes of compulsion involve consequential disabilities. But to make Courts of Law admit no marriage as valid that has not been registered, would produce incalculable social derangements, for the measure will affect the status of the children, their legitimacy, and their rights of inheritance. When the registration of marriage should have become fashionable with the people, it will be possible to declare the invalidity of unregistered marriages without causing serious mischief or misery; but it would be quite wrong now to enforce such a law; quite unjust to punish the future generation for the pardonable neglect of their parents in complying with a provision beyond their ken.

4 Without resorting to this extreme step, which, in the present state of Mohammadan civilization is sure to produce general disorder and misery in Mohammadan society, we may require that in particular classes of suits, no marriages shall be admitted as valid that are not registered—such as suits for maintenance, for dower, for conjugal rights. The objections that might be urged against the compulsory registration of marriage do not apply against the compulsory registration of dower. For though the sanctity of religion and the natural affections will always give to marriage a higher character, the Mohammadan Law of Dower is essentially based on the principles of the Law of Contract.

5 Marriages need not be registered, and children born of unregistered marriages may be declared legitimate;

but suits for the recovery of dower, maintenance, or conjugal rights should not be admitted in cases of unregistered marriages, and the plea of divorce must not be put in, or allowed to prevail, in such suits, unless the divorce should have been registered. Such suits are frequent in Eastern Bengal', and the condition proposed is, therefore, certain to bring the registration of marriages into general favor. The self-interest of brides and the natural solicitude of their parents must be sufficient to make the registration of dowers a general practice; and we shall have effected a most important improvement in the social organization of Mohammadans without any direct or unusual action on the part of the State.

16 The failure of the present law is due to various causes. The first is, that the jurisdiction or diocese of a Kaazi is much too large for his unaided management. The second cause is the use of the outlandish and cumbrous designation of Mosalmaan Registrar, instead of the more appropriate and natural one of Kaazi. The third is, that the law is voluntary, and leaves it entirely at the option of the parties to register their marriage. The Registrar of Marriages should be called the Kaazi: he should have several Naayebs under him; and the law of registration must gradually be made compulsory.

The registration of Kaabeens should be made over to Kaazis, as tending not only to keep all matrimonial affairs in a single office but, what is more important, to make Kaazis a more popular institution. District Registrars frequently make over their duties to Hindu

Registrars who do not care for the success or failure of the measure; they should not make over their superintendence over Marriage Registration except to Mohammadan officers.

7 The main contention of those who oppose the introduction of the compulsory system is that the rules are defective, and have been badly worked. Nowaab Abdul Lateef believes the law has failed, because the right sort of men have not been appointed. This assumption is not warranted by the actual state of things. For, in commenting on the theory of working of the Rules, he has forgotten to note that practically few, if any, of those persons have been actually appointed Marriage Kaazis to whom his objections are directed. Rangpor is a district in which the Act has succeeded. Tippera is one in which it has failed. And yet the men appointed in Tippera are more learned in Arabic law and occupy higher social position than those appointed in Rangpor. The fact is the success of the Registration Act in Rangpor was, in the first place, due to the idea which we allowed to go abroad that it was compulsory. In the second place, the success was due to the fact that the Marriage Registrars were encouraged to take into their confidence the village mullas of their jurisdiction and to organise them into a subordinate agency for registering marriages.

8 To make the law succeed in other districts it is necessary, at least, to extend the Kaazi's Act to the Lower Provinces.

The position of the Kaazi of old was lowered in 1772, and their prestige from that time declined. The Regulation of 1793 for a time and in a manner arrested their decay, but the gradual transfer of their executive functions and ministerial duties to paid officers culminated in their extinction in 1864. The registration of marriages fell out of vogue, and the result is the immorality which is a matter of universal regret and complaint.

The reappointment of Kaazis will gradually revive the system of registration. To make the lower orders look upon the registration of marriages with a more favorable eye, the position conferred upon the Kaazi should be such as to impress them with a sense of his importance, and the transfer of the registration of Kaabeens is sure to effect this purpose. For when the lower orders shall see that the Kaazi's office is resorted to by the higher classes of Mohammadans, they will not hesitate to follow the example.

Special Sub-Registrars are almost always Hindu in Eastern Bengal'. The transfer of the District Registrar's authority under the Marriage Registration Act to Mohammadan Deputy Magistrates, Sub-Deputy Magistrates, Sub-Registrars or Munsifs will be likely to render the Act more popular. For these officers are sure to take a natural interest in the subject, certainly a greater interest than any Hindu officer is ever likely to take.

If we wish the law to succeed we must make it compulsory ; we need not extend the compulsory clauses

to the whole of Bengal' at once; they ought at first be applied only to certain selected districts—to those districts where the large number of registrations under the present optional law proves the desire of the people for a law of registration. The law might be extended to certain other districts in a less compulsory form—to those districts in which it has but partially succeeded. It may be allowed to prevail in its present voluntary form in those districts where it has failed. In course of time, and when the practice of registration should have gained strength and become familiar, the law might be made compulsory throughout Bengal'.

The Reports on Marriage Registration Offices for 1884-85 and 1885-86 shew that the optional nature of the registration is already undoing the efforts of those local officers who, like myself, helped to enforce the law when it was first introduced. For it is reported that a gradual knowledge of the voluntary principle has already reduced the number of registrations in many districts. No change in the Rules will have any effect on the great body of the Mohammadan peasantry. The only thing that is required is to make the law compulsory and to make over the registration of Kaabeens to Marriage Registrars.

The safest policy—the safest in the long run—is perhaps always to follow and never to outstrip public opinion. I believe the majority of our community are in favor of a compulsory system, but so long as we are without a constitutional body capable of gauging

the opinion of our community and of representing it to the Government, we must be content to abide by the dictates of a bigoted minority and to see domestic misery and social depravity characterize the Mohammadans of the four divisions, in which they are most numerous.

It is feared that if we make the Act compulsory, an immediate outburst of religious excitement will be the result. But there is no foundation for this apprehension. The Act was almost compulsory in many districts, and many men of sound religious feelings and truly pious habits call for the interference. In deference to the opinion of the bigoted minority, we may leave the registration of a marriage to the discretion of the parties, but we must make claims for dower entertainable only when the marriage has been registered.

Wakfs, gifts, sales could, under the Mohammadan Law, be completed orally. The English procedure requires them not only to be written but to be registered. The law requires all suits for the recovery of money to be proved in a particular way. Why not, in the same way, make suits for dower dependent on the production of a registered Kaabeen or of a certified copy of the marriage register?

At any rate the registration of divorces must not be left to the option of parties; it must be made obligatory on them. There are a number of people present at a wedding and the proof needs not be difficult. In Qhola divorces the arrangement is generally

arrived at by the intervention of third parties; it is at least completed in the presence of persons whom the husband invites in order to assure himself against a future claim of the dower, so that Qhola divorces need not be rejected even though not registered. But it is absolutely necessary to make a talaak divorce depend on the adjudication of a Court of Justice as it did in Mohammadan societies of olden times, or to have it registered.

It is the facility of divorce which makes the marriage tie so loose among the lower Mohammadans of Bengal'. For the practice of divorce also obtains among the lower Hindus of Bengal' and Behaar, and the result is that cases of seduction are also not infrequent among them. It is necessary, therefore, to place divorces under some check, or at least to compel their registration, so that no doubt might arise in regard to the reality of at alaak.

The talaak form of divorce is the easiest thing under the Mohammadan Law, and the courts that have to deal with questions of marriage have the greatest difficulty in arriving at a correct conclusion in regard to talaak. For the law of the Sunneh does not require even the presence of a single witness.

Cases of seduction are no doubt partly due to the prevalence of polygamy. This practice the Government has no means of checking; but I am certain the great majority of our community are most decidedly in favour of compelling the registration of divorces, and the Government must now come forward and

ordain that talaak divorces must be registered. The *bigoted and narrow-minded portion of our community* think and act as if man was made for the continuance of the Shara'; but if the Shara' has been ordained for our welfare it must be modified according to the exigencies of the time in order to conduce to our welfare.

If the Mogal Government had continued, the Shara' would have been modified on many points by Imperial edicts and by judicial fatwas. Our only hope of improving our Shara' now lies in the formation of a constitutional body capable of understanding the tendencies of the time and delivering to the legislature authoritative constructions on disputed points of law.

As regards the association of two or three Mohammadans with the Inspector-General I am against the proposal for two reasons. Appointments if left to be made under a sense of divided or weakened responsibility are sure to end in a system of favoritism and jobbery: they should be left in the hands of the District Registrar and the Inspector-General.

The second reason is more sectarian. I am opposed to the association of a Mohammadan, because it is likely hereafter to prevent the appointment of a Mohammadan as Inspector-General of Registration should a Mohammadan be found fit for the office.

The committee that sat in Calcutta under the presidency of Mr. Cotton during 1880-1881 proposed the appointment of a Chief Kaazi; but I think Marriage Kaazis should be subordinate through District Regis-

trars to the Inspector-General of Registration. The creation of such an office is not only needless, but would be positively mischievous. If a Chief Kaazi be appointed, the tacit concurrence of the Mohammadan community will elevate him in time to the position of Shaeqh of Islaam; the party of orthodoxy or *takleed* will have a personal and corporeal head; the party of Dissenters or *Mo'tazelehs*, who are but just beginning to influence public opinion, will be disheartened; and the Chief Kaazi will become the main obstacle to the improvement of our Civil Law.

The decline of Mohammadan society is due to the Mohammadan laws of succession and inheritance and to the custom of plurality of wives. Polygamy prevents the development of the idea of primogeniture and of testamentary dispositions of property, and the compulsory sub-division of a mehaal or ta'alluka after the death of the owner prevents the growth of a hereditary and territorial gentry. Because polygamy was so universally prevalent among Mohammadan nations, the idea of primogeniture never formed or took root. Because the idea of primogeniture was absent, the succession to a Mohammadan crown has always been disputed between brothers and attended with bloodshed. And because the idea of primogeniture has always been absent, there has never been a class of hereditary ameers or nobles in any Mohammadan country; there has never been a power strong from long and prescriptive possession—strong in the affections of its tenantry

and retainers—strong from the remembrance of continuous and honorable achievements. There has never been such a power; and the absence of such a power is the cause of the instability of Mohammadan Governments—the cause of the decline of the Omevis, the Abbaasis, the Faatemis of Egypt, the Safevis of Eiran, and the Mogals of Hindustaan. The absence of the class of territorial chiefs or barons is the key to the decline of Mohammadan society all over Asia, Europe, and Africa.

5 It is a matter for congratulation, that almost all Mohammadan proprietors of land are now desirous of leaving their individual estates to a single heir; so that, if not opposed by treason in their own camp, they will be able to obtain in a short time the power of making testamentary dispositions or family endowments of property. But the Chief Kaazi or Shaeqh of Islaam will lead the party of treason, defeat the intention of our zemindars and ta'allukdaars, and arrest the improvement of our society. The appointment of a Chief Kaazi will, therefore, be a positive evil, and no really educated Mohammadan should vote for the creation of such an office.

7 A small amending *Regulation* by the Local Legislature (as distinguished from an *Act* passed by the Supreme Legislature) might be passed, embodying the changes proposed, and I have no doubt that in a short time the law will thoroughly succeed in arresting the demoralization of Eastern Bengal'.

THE

RENAISSANCE OF ISLAMITE CIVILIZATION.

1882-1883.

In an Essay published in 1879 I discussed the causes of the decline of Mohammadan Civilization, and I found that they were two-fold. On the one hand the Kor-aan not only inculcated the general principles of human conduct but also prescribed detailed rules for our guidance in every department of life. On the other hand, the circumstances of his situation made the Religious Leader of Arabia assume also the powers of a political leader, and thus both spiritual and temporal powers came to be concentrated in one and the same chief.

The Kor-aan gave us a body of rules for sale and purchase of property, for inheritance and succession, for marriage and divorce, for punishment of crimes, for war and retaliation, for almost every conceivable branch of human activity. Delivered by an Arab lawgiver to tribes of the Arab race they were congenial and naturally suited to the understanding and temperament of those among whom the laws were promulgated. Their success was therefore immediate and complete. In a short time Egypt, Syria, Persia were subjugated and the law of the Kor-aan was applied to govern the Copt, the Hebrew, the Greek

Aryan, and the Aryan of Eiran—to govern races to whom the genius of the Arab law was altogether unsuited.

The knowledge of Grecian Literature created a host of writers both in Psychology and Physical Science. Numerous sects of schism and dissent sprang up ; theoretical science considerably advanced ; agriculture, trade and commerce, medicine, architecture, and other practical arts were developed. But the rules of conduct laid down in the Koraan continued to govern the heterogeneous mass of races comprising the Mohammadan world—to govern the Berber, the Spaniard, the Moor, the Egyptian, the Greek, the Syrian, and the Persian, as well as the Arab. The necessity was here and there felt of changing these rules of law so as to fit them to the requirements of the place and time—to the ideas developed by Greek Philosophy and Science—to the feelings engendered by the vastness of the Mohammadan territories which had grown from the few tribes that obeyed the Prophet into the empire governed by Haaroon Resheed and Maamoon.

But no means could be hit upon so as to fit the Law of the Kor-aan to the varied circumstances of the age or the country. The Kor-aan was a Revelation from Heaven—the Shara' could not be improved. It was the almost universal opinion that the Shara' must be good for all times and all places. The Mo'tazelehs alone held a different belief; they were the most

liberal of the sects that had sprung up within the Mohammádan Church—they numbered amongst them several rénowned Qhaleefehs and many distinguished savants. The rationality and boldness of their views attracted numerous adherents, but the age was not ripe for the diffusion of their belief : the result was that when the immediate successors of Maamoon passed away the orthodox sects led by the chief Kaazi or jurist of Bagdaad recovered their strength, and the later Abbasides, being more than ordinarily bigoted, the influence of the Mo'tazelehs gradually perished.

If they had succeeded in holding their position; if they had been able to infuse rationalistic ideas into our conception of Religion, the progress of the Mohammadan world would probably have known no break, and the Decline and Fall of the Arab Empire would perhaps have never been written.

But, notwithstanding the skeptical tendencies of Greek Literature, the Mohammadan mind never acquired the boldness to separate the accidental from the essential parts of our Scriptures—never even conceived the idea of re-arranging the Soorehs of the Kor-aan in a rational series so as to place them in a logical or chronological, in a moral or historical, order. If such an idea had been conceived it must have paved the way for distinction between Soorehs delivered at Mekkeh and Soorehs delivered at Medeeneh—between Soorehs delivered when Mohammad was no more than a Religious Sage, and Soorehs delivered when he had also

become the political head of a party. If such an idea had been conceived our forefathers must have been led to distinguish between Soorehs breathing Religion pure and simple and Soorehs intended for the government of a turbulent society ; between Soorehs laying down immutable principles of morality and Soorehs intended for the control of irrepressible tribes.

The inability to conceive such an idea or to separate the accidental from the essential parts of our Scriptures was due to the combination of spiritual and temporal supremacy in the hands of one and the same person. No progress is possible without freedom of opinion and freedom of opinion could not prosper against the joint powers of the Civil Law and the Ecclesiastical Law. The very first condition for the regeneration of Mohammadan Civilization is, therefore, to separate spiritual and temporal functions from each other so as to weaken the authority arrayed against freedom of private judgment.

In those Mohammadan countries that are independent the Sovereign is still the head of the Ecclesiastical as well as the Civil administration. The President of the Olema or Shaeqh of Islam is subordinate to the Sultan of Turkey ; in Persia the Imaan acts under the authority of the Shaah ; the Shereefs of Mekkeh and Medeeneh combine in their person both secular and canonical powers ; the Ruler of Maskat is both Imaan and Sultaan. But in India the Government holds no spiritual functions in regard to its Mo-

hammadan subjects and the revival of Islamite Civilization is, therefore, more likely to begin in India. The fact that there is no recognized spiritual head among the Mohammadan community of India makes it still more likely that the civilization born in Arabia and decayed in Syria and Persia will revive in India in a broader and more abiding form ; and the first indication is the M'otazeleh movement which is joined, tacitly or overtly, by all educated Mohammadans, and which is the latest development of liberty of judgment.

The literature of England and Europe will be the most potent factor of our future civilization ; and the knowledge of English Literature, Science and Philosophy which we cannot but imbibe from English education, from translations and magazines, from newspapers and speeches—is sure to give us the observant frame of mind and the critical spirit necessary for scientific and philosophical enquiries. It is not only those who receive English education that are benefited by English literature—it is not only those who might read magazines and newspapers that are impressed by English ideas. Many other individuals will be affected by the results of English research—through them European habits of thought will permeate other classes of our society—and the Mohammadan community in general will be agitated and gradually upheaved. Seiyed Ahmed Qhaan received an education no better than what could be obtained through the barbarous system which pre-

vailed in the first half of this century, but the education of his juniors could not fail to touch him—the fearlessness of English thought could not fail to affect his beliefs. He re-examined the stock of knowledge that he had laid by and the examination led him to reject some of his ideas and to modify others; he found the stock insufficient even when thus improved and he added to it ideas which English literature enabled him to form.

Moved by the spirit of English thought he has, in his time, influenced many minds who could not be directly influenced by English education or English literature and has thus removed that stagnation which is the bane of progress and which has sat like an incubus upon the Mohammadan mind since the downfall of the Arab Empire. He has carried away with him the younger minds of his age—he has even changed the character of his antagonists in spite of themselves. For they have been obliged to refresh their knowledge, sharpen their intellects, and condescend to discuss the question on which they differ from Seiyed Ahmed Qhaan and his band of reformers. The rise of the spirit of discussion is the precursor of progress and, by his speeches and writings, Seiyed Ahmed Qhaan has produced that discussion which is going on in the Panjab as well as in Hindustaan, and which is going on even amongst the more bigoted Moslems of Bengal'.

His genius and powers have enabled him to influ-

ence the conduct and beliefs of a large number of his countrymen; but there are other writers not so well known who have more or less been instrumental in producing that upheaval of the Mohammadan mind which is the most remarkable feature of the present generation of Indian Mohammadans. To make this influence more widely felt, we must improve the system of our education so as to bring a large number of gentlemen within the reforming tendencies of English ideas; and the first instalment of that improvement may be seen in the Aleegarh College.

We must thank Seiyed Ahmed Qhaan not only for the initiation of that habit of mutual discussion which is daily spreading wider and deeper and which is likely soon to influence even those who never seek for the grounds of their opinion except in the uncertain Hadeeses or alleged traditions of the Prophet. We must also thank him for showing us the way how English education should be combined with Religious education so as not to make us pull down before we have learnt how to rebuild—not to discard old before we have imbibed new ideas—not to throw away what we possess before we have acquired anything to fill up the vacancy.

In my previous Essays I have discussed the question of Mohammadan education; I shall only repeat here that there are three features which must distinguish the new system of education from the old. There must be English education for those who intend

to enter the Civil Service or follow the higher professions; there must be vernacular education for those who intend to follow the lower professions or the arts and trades. In addition to these institutions we must have English works on Science, Philosophy, History or Sociology, Jurisprudence and Law translated into the vernacular so as to be available to those classes who are so rich as to decline entering educational institutions or so conservative as to dread the effects of English education.

In some recent articles published in the Tahzeebal Aqhlaak of Aleegarh, Seiyed Ahmed Qhaan has strongly denounced the policy of the Panjab College in preferring vernacular to English education. I agree with him in thinking that the ideas which are hereafter to regenerate Islamic Society can only be obtained through English education. These ideas are so far removed from the reach of Oriental or Asiatic modes of thought that it is absolutely impossible to obtain them without studying European or English literature, and therefore, if the Government is really desirous of enabling us to improve our present civilization, it must allow us to obtain an insight into English Literature and Science through the medium of the English language. The sceptical and inquisitive frame of mind, without which no advancement is possible, can be acquired only through a comprehensive study of English literature, and so long as the critical spirit and the ideas of the West are confined only to a small number of people,

and do not affect the general habits of thought, the English language must continue to be the vehicle of education.

But, when the European mode of thought should come to prevail among the influential classes of our society and the spirit of scepticism and enquiry should actuate our community generally, no systematic education by means of the English language will be necessary to us as a factor of our future civilization—though it might be required by the State for its administrative purposes. The time for dispensing with English education has certainly not yet arrived, but a combination of the two systems is now possible ; vernacular education and English education may now properly be joined together.

Vernacular instruction may mean either of two different kinds of instruction—instruction in Oriental knowledge or in Western knowledge. Oriental literature has been altogether stationary for several centuries—there is no general recognition of the liberty of private judgment in either Mohammadan or Hindu literature—the idea of personal freedom is entirely absent from the literature of India and Persia. To instruct us in the knowledge of the East is to make us more bigoted and intolerant than we are now in its ignorance. If Seiyed Ahmed Qhaan denounces the pernicious system of educating us in the ideas of the East, he denounces a system which is the most sure and efficacious means of preventing all future progress.

But if the object of his attack is the policy of imparting European knowledge through the medium of the vernacular, I venture to think that he is wrong.

He has confounded two very different things together, the accumulation and the diffusion of knowledge. For a long time we must derive all our ideas from English literature, and therefore the English language must continue to be the principal element of our education. But the diffusion of whatever knowledge we might thus acquire must take place through the vernacular. Seiyed Ahmed Qhaan says that this is not possible ; he instances the failure of the Asiatic Society of Bengala in popularizing its costly translations—he instances the want of success of the Scientific Society of Aleegarh in its attempt to convey the knowledge of England to the Mohammadans of India.

But he forgets that success is achieved only after repeated failures. When the Asiatic Society issued its translations there was scarcely a single individual who had any notion of the European mode of thought; there were not nearly ten men in ten thousand who had any knowledge of European ideas when the Aleegarh Institute began its publications. But times have considerably changed, and at present there are many persons imbued with the spirit of doubt and enquiry. And it must be remembered that what is impracticable in one age may become feasible in another, and absolutely necessary in a third.

As soon as the Arab Empire was established in Egypt, Syria, and Persia, the works of Grecian writers on Philosophy and Science were translated and continued to be translated for several generations. The education of the new Cult and the establishment of a large empire produced a general craving after knowledge and the translations supplied materials for enquiry and thought. The result was the intellectual activity of Persia, Syria, and Egypt which shed so great a lustre on the reigns of the Abbaside and Omevide Qhaleefehs and which gradually spread itself into Spain and the Mediterranean Isles. The thinkers of England, France, Italy, and Spain studied in the universities of Arabian Europe about the latter part of the Dark Ages and obtained their initial ideas from Arabic Literature; they conveyed those ideas into the languages of Europe and the diffusion of the Arab spirit of enquiry brought about the Revival of Knowledge after the Middle Ages and gave that impetus to the Civilization of Europe which has raised it to its present level. So that tho' the ideas were derived from a foreign literature their diffusion depended wholly on the vernacular languages of Europe.

But the ideas of a literature rendered illustrious by the names of Waasel-ben-Ata, Abu Nasr, Avicenna, and Averroes could have no effect till the critical spirit had advanced and did not in fact exercise any influence till the age had become ripe for their reception. Similarly, the results of English enquiry and

practice had been translated into the French language at various times before the Great Revolution, but they failed to touch the French mind till the sceptical spirit had shown itself in the Literature of France and the age was prepared to receive the ideas of England on Philosophy, Science, and Politics. The Revolution of 1789, which destroyed at one fell swoop antiquated prejudices and inharmonious institutions, was the consequence of the gradual diffusion of English ideas thro' French translations.

Well and truly does Mr. Buckle say that the interchange of ideas will be a most important factor in the future development of nations—and the powerful influence of English ideas conveyed to the Mohammadans of India through their vernacular will be the instrument of resuscitating that spirit of enquiry which produced men like Avicenna (Ibne Seena) and Averroes (Ibne Rushd). Seiyed Ahmed Qhaan forgets that he himself has illustrated the power and might of vernacular education by the intellectual agitation which he has produced among the Mohammadans of the present generation. There are Mohammadans in India who have more liberal ideas—but they have failed to influence their community. The majority of those who attend English institutions have in view the Civil Service or the higher professions, and when they enter the arena of life they do not feel inclined to discuss intellectual or social problems with their unanglicised brethren ; Indian ideas and

English ideas are so far apart that they suppose it a waste of time and labor to try to influence their inferior countrymen. The atmosphere of their thought is altogether foreign: their writings or speeches are not addressed to their countrymen but to the English Rulers of India.

Seiyed Ahmed Qhaan forgets that next to the nurture and influence of the Religion of Mohammad it was the study of Greek Literature which developed the spirit of enquiry among the Arabs of Bagdaad. During the reigns of the earlier monarchs of the Abbaasi dynasty the works of Grecian writers on Mathematics, Ethics, Logic, Philosophy, and Medicine were translated; and Greek speculation and Greek ideas produced that spirit of enquiry which lasted for several centuries and which was destroyed only by the invasions of the barbarian hordes of Tatary and by the consequent disorganization of society and destruction of civilization.

Translations may be read by all those who are not dissociated from Indian ideas—who are not removed from community of thought with their co-religionists—who are as unanglicized as their neighbours; they will of course be inclined to discuss their new ideas and publish their new beliefs. For one mind that might be directly influenced by English education there will be ten that would be benefited by English Philosophy, Science and History by means of their vernacular tongue; for one mind that might be

set to enquire and think by English education there will be ten that would be set to enquire and think by vernacular education.

By his writings in the Aleegarh Institute Gazette and then in the Tahzeeb-al-Aqhlaak, Seiyed Ahmed Qhaan has succeeded in disturbing the stationary character of the Mohammadan mind—he has rendered the Mohammadans of India amenable to reason. Does he think that his success would have been equally great if he had written his articles in the English language? He is entirely mistaken if he believes it possible to educate the great majority of our community by means of the language of England; they must contrive to get whatever knowledge they might be able to get through the medium of the vernacular.

The female half of the community will always preserve their Indian characteristics and continue to hold to their Indian proclivities; they will never be anglicized—and Seiyed Ahmed Qhaan knows very well that the training of the infant is an important element in the education of children and that it must continue to be in the hands of the mother and the elder sisters. No education will reach the female sex of our community unless it is imparted by means of the vernacular languages of India.

The advance of knowledge characteristic of a civilized country must be two-fold. The sum of knowledge in its possession must successively in-

crease — and this knowledge must be gradually diffused among the whole people. In the olden States of Egypt and Western Asia, of Greece and Rome, the accumulation of knowledge was considerable — but these ancient civilizations wanted the faculty of diffusing the knowledge they possessed. The Brahmans of India cultivated poetry, philosophy, logic and mathematics — but the Aryan civilization of India absolutely failed to diffuse their knowledge — because the language in which they thought and wrote was a language confined to the priestly and clerical classes. Similarly the civilization of the Arab Empire, though it considerably advanced the sum of knowledge, was one sided and defective — it failed to penetrate the great body of the people. Almost all the great names of the Arab Literature of the Eastern Empire prove their Persian origin ; but they thought and wrote in a language unknown except among the learned classes. The result was that the civilization failed to diffuse itself and the genius and energy which had produced it at length disappeared.

We must be careful not to make the same mistake again. We must take steps not only to accumulate our knowledge, but we must also adopt the best means of making that knowledge available to the great body of our community, female as well as male. Diffusion must advance hand in hand with accumulation ; for knowledge as well as wealth must penetrate the middle and lower classes in order to create an en-

during civilization. I have already indicated, but I shall recapitulate, the chief features of the system of education which I believe to be suited to the present and next generation of the Mohammadans of India: there must be European education in the English language for the higher and the higher-middle classes; there must be European education by means of the vernacular for the lower and the lower-middle classes; and English Treatises on Ethics, Politics, History, Jurisprudence, Sociology, Biology, Physiology, Psychology, Logic and Mathematics—on all sciences, abstract and concrete—must be reproduced in the Indian vernaculars.

In this way no class of our community will fail to obtain that education which may be suited to its circumstances and the gradual spread of knowledge amongst us will develop that sceptical and critical spirit which is the essential condition of progress. The Rulers of India are aliens in religion as well as in race and country. The freedom of theoretical and scientific enquiry is therefore safe from the persecution of the State. But its greatest foe is the superstitious bigotry of our community. To make us secure against the intolerance of our public opinion it is absolutely necessary to overthrow the doctrine that unconscious error in an honest search after truth entails divine punishment.

Neither in Arabia, Egypt, or Syria, nor in Persia, Boqhaara, or India has the Mohammadan mind ever

been able to recognize or maintain the innocence of an error committed in a sincere search after truth — and this inability is the most cogent proof of the weak foundation and the narrow development of Islaamic civilization. The Mohammadan Religion very early branched off into numerous sects, but it is said that all except one are doomed to hell. This strange belief gave so much prominence to the doctrine of the sinfulness of unconscious error that it succeeded in preventing independent discussion on many subjects totally unconnected with Religion. For instance, it prevented every Mohammadan race from discovering or establishing a true measure of time. The Lunar year is perfectly useless for purposes of agriculture or navigation; but, though these disadvantages vanish with the adoption of the Solar Era, the doctrine exercised so strong a hold over the Mohammadan mind that the various and manifold advantages of the Solar year failed to persuade any Mohammadan race even to revert to the pretty rational measure of time which the much vilified pagan Arabs had possessed, but which had been suppressed soon after the establishment of Islaam.

The doctrines of the Mo'tazeleh sect were based on freedom of thought and liberty of discussion—they enunciated, though vague and dim, the principle of Evolution which has now been established centuries later—they were true Rationalists in Religion. They represented the rebellion of the intellect against

doctrinal tyranny; but they failed against the power of the Church or Shaeqh of Islaam—against the power of the Olema or Jurists who represented the orthodox Faith. It is a most fortunate circumstance in India that the Moslem Church has no recognized head. The State has no desire to persecute thought or opinion on either religious or scientific subjects—while the Church is powerless to repress argument or discussion. The Shee'eh or Imaamiya sect comprises but a small minority of the Mohammadans of India and the hereditary succession of Imaams in their Church does not affect the great body of the Mohammadan community.

In the infancy of civilization it is the existence of a vicegerent of God on Earth that frequently prevents rapine and bloodshed. The exhortations and denunciations of the Pope many a time put a stop to the invasions of kings and the devastations of armies. But the Religion of Mohammad succeeded in establishing itself on a firm basis even during the life-time of the Prophet; not only did it succeed in the land of its birth, but it converted the neighbouring nations of Egypt, Syria, and Persia. Amongst the nations of medieval Europe the Head of the Church and the Head of the Army were two altogether different individuals—amongst our Arab ancestors the Head of the Army was the same as the Head of the Church.

At the outset of our civilization the Religious principle was paramount over the Political principle,

but as time progressed the Church became gradually subordinate to the State. So that there was no power in the community capable of checking warfare or bloodshed. The Pope being the recognized Expounder of the Revealed Code of Ethics in Europe was able to hinder or stop warfare. But the Apostolic succession among the Mohammadans was very early disputed and the right to the Religious Qhelaafet became synonymous with the might to acquire political succession.

The feud begun between Moaaviyeh and Ali—continued between Yezeed and Hosaen—and concluded between the Merwaanis and the Abbaasis—represented the struggle for Apostolic succession; and if Yezeed had not outraged the feelings of the Arab race by his murder of Hosaen, the Omavis might have successfully withstood the revolt of the Abbaasis. The fact is that no party in the early history of our race was interested in discouraging or restraining warfare; on the contrary every conceivable opportunity was taken to oust the Omevis of Damashk from political power: so that warfare instead of being a state to be deplored became something like a necessity or duty.

The various attempts which the sons of Ali made from time to time to wrest political power from the Omevis, all failed—but at last the revolt of the Abbaasis (who represented themselves to have received the Apostolic succession through a son of Ali by his second wife) succeeded with the aid of the Persian

Mohammadans; and the dispute for the Qhelaafet which had hitherto lain between the Omevis and the Haashemis was upon the defeat of Merwaan the last and the victory of Abu'l-Abbaas the Saffaah waged between the Abbaasis and the Faatemis. The strength and resources of the descendants of Mansoor dispirited the Faatemis and the Apostolic succession gradually came to be regarded as the right of the Empire of Bagdaad. Even the temporary success in Egypt of the dynasty which alleged itself to be descended from Ismaaeel and Hosaen proved that Religious Qhelaafet was the appanage of physical force, not of moral sanctity. So that when the Tataar hordes appeared there was no Religious power which could curb their barbarities or oppose their devastations.

But the days of the ravages of barbarian hordes are gone—the exhortations or denunciations of a Pope are no longer necessary in Europe—and the conditions of political, national, and social life have undergone so great a change that they would be out of place even in Asia. We missed the opportunity of establishing a Religious chieftaincy distinct from the political chieftaincy and Mohammadan nations must look for their improvement to the diffusion of European literature and the example of European history. If we now had a Religious chief distinct from the political chief, he will be, as he is elsewhere, a puppet in the hands of the sovereign and he would certainly be, as

the Catholic Pope is, an uncompromising opponent of knowledge and progress.

It is fortunate therefore that in India we have no Religious chief or Imaam to lead us away from the Path of knowledge and progress—and we shall the more easily be able to take steps for distinguishing the Shara' from the Religion of our Scriptures—the Civil Law from the Deen or Islaam of our Holy Writ. To enable us to effect this end it will be sufficient to re-arrange the Kor-aan in a historical or chronological order, as such a re-arrangement will at once separate the Medeeneh from the Mekkeh Soorehs and detach the legal ordinances of our Kor-aan from its Faith and Morality. The earliest Soorehs breathe that pure and high inspiration which is of Heaven — the later Soorehs are clearly intended for the governance of military and irrepressible tribes; the former teach us religious and moral principles transcendent to human reason—the latter lay down for the guidance of our conduct rules which require to be changed with every change of time and place.

The Mohammadan priests of the present day preach, not upon the necessity of observing those immutable principles of morality which make up civilization, but upon observing those rules which cling to Mohammadanism merely from accidental circumstances. They do not attempt to preach upon the duty of man to man, upon that universal brotherhood which is the essence of the Mohammadan Religion;

but they preach upon the mode of ablution, the form of dress, the seclusion of women, the division of property. Their influence depends upon the ignorance of their flock—the spread of a knowledge of the real principles of Mohammadanism would affect their interests and it is for this reason that they are opposed to the translation of religious works into the vernacular.

But they fail to see that the human mind is never satisfied with ignorance, and that if true knowledge is held back the populace will eagerly admit whatever might be offered in its stead. This is the reason that such works as the Jangnaama and the Ameer Hamza are anxiously read by the low Mohammadans of Bengal'. Unfounded assertions are woven into impossible stories—history is perverted and chronology is scattered to the winds. These tales are recited and heard not only with eagerness but as words of inspiration.

And the cause is not difficult to find—nor far to discover. The priests brought up under our dogmatic system of education do not know the language of Bengal' and could not touch the hearts of these convert Mohammadans who form almost ninety-nine hundredths of the Moslem population of Eastern Bengal'. Men born among themselves and speaking their own mother tongue soon appeared to guide them. They had the same thoughts and the same habits and they obtained immediate success in gaining the hearts of those around them.

They were, of course, ignorant of the real principles of Mohammadanism — ignorant of charity and love, of devotion to duty, of Islaam or the endeavour after righteousness. The Mosalmaan books published in the Bengaali language do not teach the necessity of strengthening these principles—but relate stories of battles that never took place or victories that never occurred. Even this false narration of facts is mischievous—but it is not all. They are so described as to give prominence to traits and habits which are not compatible with true morality. A Saint offended with a King enshrouds the sun and darkens the earth—the utterly unjustifiable injury done to innocent subjects is ignored. An Imaam becomes immortal for revenging his friends on the sons of their enemies. A Shah is applauded for cursing the adherents of an opposite Mohammadan Sect.

This dissemination of false knowledge and false morality affords another and perhaps a stronger reason against Seiyed Ahmed Qhaan. If vernacular education is not better diffused we must always expect that effusion of bigotry and intolerance which the teachings of Doodu Miyan and the preachings of his disciples have produced. Unless we convey the ideas of the Mohammadan Religion or Morality into the vernacular, unless we give them a good knowledge of the history and development of the Mohammadan Faith, we cannot hope to destroy the superstition and intolerance of the masses of Moslem Bengal'. We must translate all our

Religious Books and all our Books on morality into the vernacular. At any rate we must translate the Kor-aan—the fountain-head of our Religion and Morality—the Book which ought to guide every Moslem in his duty towards God, in his duty towards his fellow brethren, and in his duty towards the inferior Creation.

The Kor-aan must be translated into the various vernacular tongues of India so as to give to our people a rational knowledge of the Religion of Mohammad, and to enable them to judge of the immutable principles of Morality which he taught and which are true for all ages and all places, and of the social regulations which the accident of his position as a sovereign obliged him to impose. They must understand that Religion whose sublime idea of God and love of human beings have spread it over such a large portion of the Globe—and that system of civil law which has, by its disregard of changing and changeable environments, brought about the almost universal decline of Mohammadan Civilization.

They must understand that idea of the unity of God and that spirit of love and charity which fused into an united nation the various Arab tribes that had warred against each other from time beyond the memory of man—which enabled them to regenerate the civilizations of Egypt, Syria, and Persia—and which produced those great thinkers of Arabian

Europe and Asia from whom Bacon derived his initial ideas and modern science its high development. They must also understand the nature of that Shara' or Civil Law which, preventing the Arab from modifying his customs or institutions or from suiting them to altered or altering environments, enabled the Spaniard to turn him out of Andalusia.

They must understand the nature of that Semitic Civilization and the necessity of that union of Religion and Science which produced men like Avicenna, Eben Tofael, and Averroes—nurtured those pioneers of Modern Civilization to whom Europe owes its largest measure of gratitude—and established those famous universities to whose teaching must be traced the Renascence of knowledge in Europe. And they must understand that system of dogmatic law and rigorous jurisprudence which continuing constant amidst all changes of time, place, and environments has been the cause of the general decline of Mohammadan society, of its decline in China, in Tatary, in India, and Persia, in Asiatic and European Turkey, in Egypt and Arabia.

The existence of a Government alien to us in Religion will guarantee us that freedom of thought and opinion which is an essential condition of progress—the absence of a Shaeqh of Islaam or Arch Imaam will guarantee us against that spirit of persecution which has moved the Church in all ages and has frequently succeeded in postponing if not altogether pre-

venting the progress of nations. But the prevalence of a spirit of discussion is an equally if not a more important condition and such a habit cannot arise before we begin to doubt long established beliefs and to search for their uses and reasons.

This spirit of scepticism and enquiry was so powerful during the reigns of the Abbaasis of Bagdaad and the Moors of Spain that a host of thinkers and writers sprang up in every part of the Arab Empire. Astronomy, Logic, Psychology, Surgery and Medicine, Algebra and Geometry, Natural Philosophy and Natural History, Social History and general Literature were advanced—and universities were established in Arabian Europe and Asia which nurtured those leaders of Semitic thought and science to whom Europe owed its rapid development after the Feudal Ages and which disseminated those ideas and habits of thought that revolutionized Europe. It was only after the Arab Empire had been overrun in Asia by the barbarian hordes of Tatary and overthrown in Europe by the bigotry of Christian Spain that the Arab universities decayed—Literature, Philosophy, and Science were neglected—and the race of Waasel ben Ata, Abu Nasr of Faaraab, Avicenna, Eben Tofael and Averroes or Ibne Rushd, disappeared.

But the Literature of the Arabian Empire had already trained a body of European scholars in the habits of Arab thought and the methods of Arab

Philosophy—and the ideas of Arab thinkers and Arab philosophers conveyed to Europe through the universities of Arabian Europe and the Mediterranean Isles and germinating in a virgin soil produced that intellectual activity which has been advancing without interruption for so many centuries. The civilization which resulted from this upheaval of the European mind has now come in contact on the plains of India with the descendants of those people who gave birth to men like Abu Nasr, Ibne Seena, Ibne Baaja and Ibne Rushd, and from whom Europe derived its first impulse to the acquisition of knowledge ; it is now prepared both from its character and position to pay back with interest the debt which Christian Europe owes to the Science, Philosophy and Literature of the Arab Empire—the debt which European knowledge owes to Islaam—the debt which European Civilization owes to Mohammad.

It is a knowledge of English science and of English development alone that can now remove the intellectual torpor of the Mohammadans of India or re-animate the effete civilization which they have inherited from their forefathers. We must expect nothing from that sham education which we get in the Arabic Madrasehs—the Mohseneya funds that they waste are entirely lost to the Mohammadan community. All our hopes of regeneration now rest on that English education which we so long neglected and which we have just begun to acquire—all our hopes now depend

on our education in English science and English history. We must devise the best means we can of acquiring this education and of vindicating the character of Islaam as a Religion capable of still further ameliorating the condition of Man.

Strictly and philosophically speaking it is not the duty of the State to provide knowledge any more than it is its duty to provide food for its subjects. Though in India the State has for administrative purposes, found it necessary to undertake the education of the people, it is gradually curtailing its expenditure in this department, and leaving public instruction in the hands of individual or corporate agencies. The time is not far off when the State will content itself merely with inspecting and directing public instruction and will leave its organization and supply entirely to the efforts of the people themselves.

The Annual Reports of the Education Department in Bengal' and Behaar say that while the number of Mohammadan boys receiving tuition in vernacular seminaries is tolerably high, that of Mohammadan students attending English schools and colleges is much too low. Sir. Alex : Croft in his Report for 1879-80 says : "Of the whole school-going population the proportion of Hindus steadily rises and that of Mohammadans steadily falls as we pass from lower to higher classes of instruction," and the following statement, calculated from the figures of the Annual

Reports of 1878-79 and 1879-80, proves the correctness of the Director's inference:—

Proportion of	In the Lower Provinces	
	Mohammadan.	Hindu.
Population as Censussed in 1881 ...	31·6	63·4
Boys in all general Institutions ...	17·9	80·1
In Vernacular Institutions ...	18·5	79·4
In English Institutions ...	11·0	87·5

The higher classes of Hindus in Bengal' form a respectable portion of the Hindu community, while the higher classes of Mohammadans form a very inconsiderably minority. On the other hand there is a large Hindu population engaged in trade and commerce and perfectly sensible of the advantages of education, while the great majority of the convert Mohammadans of Bengal' are engaged in agriculture and are as narrow-minded as the generality of rural classes. So that taking into consideration the social position of the Mohammadans of Bengal' it is clear from the figures quoted that as regards English education the number of Mohammadan students is much too low though, as far as ver nacular education is concerned, it is tolerably high. But even in vernacular instruction the proportion of boys attending higher

seminaries is smaller than those attending lower seminaries—as will appear below :—

Proportion of Boys	Mohammadan.	Hindu.
In Seminaries ...	20·4	75·6
Lower Schools ...	15·8	80·1
Vernacular Schools	14·0	83·6
English Vernacular Schools ...	12·8	85·7

The same rule of diminution of numbers as the course of instruction rises holds good in English instruction as may be seen in the following figures :—

Boys.	Mohammadan.	Hindu.
In Vernr. English Schools ...	12·8	85·7
Higher Schools...	10·2	88·7
Colleges ...	4·9	91·6

From this statement it will be seen that the proportion of Mohammadan boys in general Colleges is even less than half of that in Entrance schools, and that the Mohammadans of Bengal' are unable to acquire the higher education provided in Schools and Colleges.

This failure is due to their comparative poverty and the consequent necessity of leaving school at an early age. In special Colleges their proportion is less than that in general Colleges, as shown below :—

General, or Arts Colleges.	Special, or Professional Colleges.
4·9	4·1

The reason evidently is that higher special education is more costly and takes much more time than

general education—for lower special instruction, which is less costly and less tedious attracts a considerably larger proportion of boys, as will appear from the following figures:—

Higher Professions.	Lower Professions.
4·1	19·4

These figures show that Mohammadan students are quite able to study those professions which require less outlay of time, but they fail to study those which are more costly. The comparative poverty of Mohammadan scholars obliges them to sell their time and labor in order to obtain the opportunity of prosecuting their studies. They have to put up in Calcutta with gentlemen who require their services for the tuition of children at home—they cannot therefore attend regularly and properly to their studies—and they do not succeed quite well in the university examinations as shown below:—

Candidates.	Mohammadan.	Hindu.
Competed ...	4·7	88·3
Passed	3·9	88·1

In the higher examinations of the F. A. and B. A. the results obtained are even more unfavourable than those obtained in the matriculation examination, as will appear from the following figures:—

Candidates.	Entrance or Matriculation.	First Art and B. A.
Competed for...	4·8	4·6
Passed in ...	4·0	3·8

So that many Mohammadan boys, who manage to go up to the entrance examination, fail to push further

on and cannot pursue their college courses ; and the above statements conclusively prove that Mohammadan boys begin to draw off from educational institutions as soon as they are called upon to look after the support of the family.

There are thus four facts which tend to prove that the general poverty of the Mohammadans of Bengal' prevents them from obtaining their fair share of education.

(*a*).—Vernacular instruction is cheaper and sooner obtained—therefore vernacular instruction attracts a large number of boys.

(*b*).—University instruction is costlier and later obtained—therefore university instruction attracts only a small number of boys.

(*c*).—Instruction in the lower professions is cheaper and occupies a short time—therefore many Mohammadans are able to acquire a knowledge of the lower professions.

(*d*).—Instruction in the higher professions is much costlier and occupies a very much longer time—therefore very few Mohammadans are able to acquire a knowledge of the higher professions.

But the only education capable of reforming our social organization is high education. What we want is new and vigorous ideas, and high education alone can impart them to our community. The first step, therefore, that is necessary for the improvement of our community, is to provide such a cheap English educa-

tion as may not weaken our feelings of self-respect or enfeeble our habits of self-dependence. If we enter the general institutions of the country we must pay as much for our education as Hindus, for if, studying in the same schools and under the same teachers, we get our education cheaper than Hindus, we are sure to lose our self-respect. There would be a constant sense of inferiority and degradation clinging to us, and the experience of present and future adversity must surely effect a serious debasement of our character and will probably cause a permanent demoralization.

If we are to have a system of cheap education we must have schools and colleges devoted exclusively to Mohammadan tuition, and such a system of denominational education may easily be provided for by a better application of the Mohseneya Funds. During 1879-80 the assignments made from them for the instruction of Mohammadan boys have been shown below :—

For Arabic tuition of 844 boys, Rs. 28,080. For English tuition of 7,584 boys, Rs. 27,652. In other words, the Government assigns the same sum for the tuition of a hundred boys in English that it assigns for the tuition of ten boys in Arabic.

But Zela' schools are supported by other funds, and the following figures will show what the cost of a Mohammadan student reaches in English institution :—

Number of boys		73,485
Total cost	Rs.	14,22,996

Cost of each student, less than ...	Rs.	20
Mohammadan boys		7,584
Cost of Mohammadan students ...	Rs.	1,51,680
Add Mohsen Funds	"	27,652
Full cost of Mohammadan students	"	1,79,302
Full cost of each Mohammadan student of English, less than ...	"	24
Full cost of each Mohammadan student of Arabic, less than ...	"	34

So that taking into account the help which Mohammadan students get from other sources the cost of an Arabic student is to that of an English student as 3 is to 2. And what is the result of this large expenditure on Arabic education? Do the Madrasehs turn out men better capable of earning their bread than those who are unlettered? Are the men who come out of our Madrasehs more honest or less selfish than those who have never entered them?

There are works in Arabic on Science, Philosophy, Morality, History, and Literature which are capable of invigorating the intellect and elevating the character of man—but there are not many Arabic scholars in India who know the names of these works, and there are few who have any clear idea of their contents. What is taught in these Madrasehs is an almost obsolete logic and a jurisprudence which is of no practical value; the books read do not give us any glimpse of the idea of freedom of thought or of the power of the human mind. And it is by means of this sham education that we seek to rouse the intellec-

tual torpor and to regenerate the civilization of the Mohammadans of India !

It was an evil day for the Mohammadans of India when the Government decided to devote the Mohsen Funds to the establishment of Arabic Madrasehs. The result of their tuition is an intolerant bigotry which is the greatest obstacle to the reform of our society and the renascence of our civilization. We must change the system of our education and the money which supports these Madrasehs should be diverted to the establishment of special institutions for the English tuition of Mohammadan boys.

The love of his community which so strongly characterises Seiyed Ahmed Qhaan, impelled him to devote his best energies to the establishment of a Mohammadan college at Aleegarh ; such is the nobleness of his nature that he did not consider it beneath him to ask for charity and alms for the sake of doing good to his fellow Moslems. His immense mental and moral powers and the labours of a life-time have enabled him to collect a large income for the support of the Aleegarh College. But the Mohammadans of Bengal' have such a resource lying for years at their hands and they have failed to apply it to the education of their fellow Mohammadans.

The personal feelings and interested motives of a few gentlemen have divided the Mohammadan gentry of Bengal' and Behaar into two parties whose bitter hostility to each other is a matter of comment by

Europeans as well as Hindus. The avowed object of both parties is the improvement of Mohammadans and Mohammadan society; but false ambition and low rivalry prevent them from coalescing with each other. They must bury these differences in a mutual toleration. They must forget them in the presence of the peril which stands threatening in our way.

We must call upon the State to divert the Mohsen Funds from Arabic Madrasehs and to found with them English colleges and schools for our education. Sir Ashley Eden has already declared that he is willing to assist us, and the letter numbered 2019, and dated the 19th July, 1876, from the Secretary of the General Department to the Director of Public Instruction, lays down principles which are calculated to advance our education.

The second clause of the letter says the Mohseneya Madrasehs have been established in order to realize the present idea of liberal education amongst Mohammadans, but the encouragement of Oriental study forms only a very subsidiary part of the scheme of Mohammadan education. The eleventh clause says the Mohsen Funds need not necessarily be devoted to Oriental knowledge; the only obligation which the Government accepts and recognizes is that they shall be devoted to the furtherance of Mohammadan education, but the right of determining the course of study is reserved by the Government.

The fifth clause says the study of English literature

and English science should be undertaken and provided in the Madrasehs. The ninth clause says Sir Ashley Eden hopes that these Mohseneya Madrasehs will in time become Oriental Departments of English Colleges. The seventh clause says the Government will ever welcome signs that the Mohammadans accept and desire a broader and deeper education.

We have now only to come forward in a body and represent to the Government that we desire a good English education, and the Government will be able to put its views into practice, to cease to spend our money lavishly on what is useless, and to begin to spend it on what is now absolutely necessary. But we must take care that education does not become so cheap as to make us feel that it could be easily secured. Men must know that strong and continued efforts are necessary to give their children the education of a gentleman. Education must never be so cheap as to weaken the motives for our exertion or to enfeeble our prudence or self-responsibility. For societies improve only by letting individuals feel the consequences of their own acts and omissions, and civilization is the result of the practice of energy and self-help.

Though in the present age our education must be cheaper than that of our Hindu neighbours, it must be made sufficiently dear to affect the pockets of Mohammadan parents. In other words, Mohammadan boys must pay such fees as are sufficiently

high to make us understand that we are securing a good object or an object worthy to be secured. But we have already seen that, notwithstanding Mohammadan boys pay only a third of the usual and prescribed fees, they are unable to compete with their Hindu fellows. Under the system now in force our education is already as cheap as the advocates of free education might desire; we cannot expect therefore that a change of system—a change from general to denominational education—will infuse any new vigor or fresh aptitude into the character of Mohammadan students.

The poverty of their parents will continue to call away Mohammadan boys earlier from schools in order to look after the maintenance of the family; it will continue to make them sell their time and labor for the purpose of carrying on their studies and to give them but very partial success in their university course. The main obstacle, to the education of the Mohammadans of Bengal' is their poverty—and drastic measures should now be taken to effect a radical reform of our social organization.

The republican fairness of our laws may be suited to countries where no other laws hold, but in India we have other systems of jurisprudence working side by side with our own. The Hindu is as much or as little civilized as the Mohammadan, but the conservative tendency of his laws enables him to rise in the scale of wealth. The Englishman has been educated

in energy and prudence through several centuries and the democratic tendency of his laws is suited to his circumstances.

Modern civilization owes to the great prophet of Arabia the idea of an universal religion and the idea of the equality of men—but the civilization of Islaam has still to learn that intellectual freedom is not opposed to religion and that the increase of wealth is a necessary accompaniment to the advance of civilization. The decline of the Mo'tazelehs signifies that intellectual freedom failed to make head against the intolerance of the church and the combined poverty and ignorance of Mohammadan races at the present day prove the truth of the second principle. It is European civilzation that can teach us how to combine science and religion. It is the civilization of England that will teach us how to increase our wealth and develop our knowledge.

The renaissance of knowledge after the Middle Ages, the movement of Wicliffé and the Lollards, the Reformation of Religion in the sixteenth century, the Baconian philosophy, the spirit of speculation of the nineteenth century are successive stages of the attempt to combine Science with Religion. The history of the Arabs has no such achievements to show ; the Mo'tazelehs succeeded for a time because the sovereigns of the celebrated house of Abbaas who then wielded the sceptre of the Arab Empire were liberal rationalists. But the knowledge of the age was not

ripe enough for the ultimate success of the Mo'tazelehs, and it is now necessary for us to borrow the help of the civilization of England and Europe to teach us that Science and Religion are perfectly compatible with each other.

From the same source we must learn the principle that the progress of knowledge depends on the increase of wealth and the progress of civilization depends on the development of a territorial aristocracy. The essential conditions of progress are personal freedom and the stability of the Government, but during the earlier stages of civilization both freedom and stability are wanting in countries where the landed aristocracy is weak.

In England the principle of individual liberty was first established in the reign of John, and the promoters of the movement were the feudal barons. It was the aristocracy, titled or untitled, that withstood the attempts of Charles the First against public liberty. The expulsion of James the Second was due to the activity and movements of the gentry—the combination of the Lords and Squires of the realm.

It is only when the sovereign has been effectually controlled, when the spirit of patriotism has evolved a national spirit, and when the factors or constituents of civilization have fairly advanced, that other classes spring up and co-operate with the landed gentry in further developing the principle of personal liberty. The Habeas Corpus Act, the Toleration Act, Fox's

Libel Act, Catholic Emancipation, Parliamentary Reform—are all movements of the development of other forces in England, but they could not have been carried without the active co-operation of the peers and squires. Even the Repeal of the Corn Laws, which affected their own interests, was carried with their support and assistance.

But, illustrious as have been their services towards the development of personal freedom, their services towards the development of national stability have been still more illustrious. It was the barons and their retainers that withstood and finally overcame the raids of the Welsh people—it was the feudal aristocracy that opposed Scotch Kings and repelled Scotch Clans—it was the aristocracy and the gentry that stood around Elizabeth on the occasion of the Spanish Armada and defied the strength and resources of the Spanish Empire.

It was the power of the barons and their retainers that helped the sovereign of the Franks against the German Empire. It was the Frank aristocracy that defeated the Moorish Arabs at Tours. It was the territorial nobility that compelled Moslemeh to retire with his Saracenic army from before the walls of Constantinople. It was the feudal barons that destroyed the Arab dominion in Spain. Tho' the spirit of enquiry fostered by the Arabs vanished, the trade and commerce of the country declined, and the vast colonies of America became a prey to the greed of

France and England—tho' the result to Spain was thus a rapid decline—these instances show the power of the aristocracy during the early history of a people—they show that the independence of a nation or the stability of its government is in the earlier stages of progress secured only by the strengh of the landed aristocracy—a strength derived from the continued possession of generations, from the recollection of noble achievements, and from the unhesitating obedience of retainers and tenants.

The rebellion of Kaawa against Zahaak represents the rise of the Dehgaans or feudal barons of Eiraan, and it was their power and aid that enabled Fereidoon to establish a national government. The strength of the Kayanian sovereigns of Persia lay in the adherence of the ancient barons who possessed the willing obedience of their lieges ; it was the Gevs and Godarzes, the Nareemans and Rostams of Ferdaosic celebrity—it was the representatives of the territorial nobility—that sustained the Persian Empire against the typical Afraasyabs of Tooraan and the incessant attacks of Tooranian hordes.

The later Achaemenians tried to bring the feudal nobility under greater subjection—but the representatives of the aristocracy were gradually estranged and the country fell at the very first onslaught of the Makedonian army. The Saasanide sovereigns for a time gathered together the remnants of the ancient forces of the Empire—but they ruled by means of

Merzbaans or satraps, not by means of Dehkaans or barons. Their power was therefore mainly bureaucratic and the appearance of Mazdak and the diffusion of communism destroyed what little power the Dehgaans or squires still had. So that when the forces of Yezdegerd and the Arabs were arrayed against each other there could be no doubt about the result, and the battles of Kaadesiya and Nehaavend laid the empire of Fereidoon and Shaerooya, Daara and Ardesheer, Parveez and Anoosherwaan at the feet of Sa'd ben Vekkaas and Qhaleefeh Omar, the Just.

The Western Empire of the Arabs fell before the bigotry of the Christian clergy because there were no clan of Moorish nobles who had the slightest territorial hold on Spain. The Eastern Empire fell against the inroads of Tataar barbarians because there was no ancient body of Ameers whose power was rooted in the country or who could by their organization support the Monarchy or the Government. The regular and successive failures of the Moors, Faatemis, Abbaasis, Saffaaris, Saamaanis, Daelamis, Kurdis, Safevis, and Gaznevis were due to deep-seated and general causes. The old aristocracy had perished—the spirit of clanship failed to take root when transplanted from the sandy deserts of Arabia into the fertile plains of Egpyt, Eraak, or Qhoraasan, and the Mohammadan laws of inheritance prevented the rise of a new nobility.

The reason that no Mohammadan Government

has ever been able to progress beyond a certain stage is that the real principle or condition of progress was wanting. Our Revelation not only taught us our duty to God and fellow creatures but also gave us a body of laws prescribing rules for the conduct of domestic and social concerns and for the guidance of municipal and national affairs. We had got everything—there was nothig to desire ; we had got everything from Heaven—there was nothing to improve.

If the Koraan had contained no detailed rules of conduct for our guidance the King must have been law-maker as well as law-administrator ; and in course of time a legislative department would have grown and developed in co-ordination with the executive. The existence of such a department should have enabled us from time to time to adjust our actions to our feelings and modify our laws and institutions.

But the faith in the perfection of our laws and the incapacity of the human mind to deal with them could not have prevented the formation and development of a legislative body within the Government if there had been a power in the State capable of forcing the monarch to consult his subjects. Wars with his neighbours compel a ruler to tax his subjects oftener than necessary in a state of peace. If these wars become frequent, his subjects begin to grumble at the taxation : but unless there is a class in the community capable of organizing a regular resistance to the demands of the King his subjects have to grumble in vain.

If there is such a class in the community one of two things occurs ; either the nobility is so powerful as to evade all taxation and the result is the tremendous revolution of 1789—or the nobility unites with the commons, shares the burdens of taxation with them, and thus lays the foundation of a Magna Charta and a Parliament. Neither of these courses, however, was possible in any Mahammadan country—for the laws of property laid down in their Kor-aan prevented the rise or development of a territorial aristocracy. We were misled by the apparent fairness of our laws of inheritance and succession and failed to observe that their democratic nature screened their ultimate tendencies. The republican justice of our laws of property prevented us from discovering that they were based on principles fatal to the security of person and the development of liberty in the early history of society. They prevented the growth of an aristocracy who, alone, in an age of barbarous ignorance, possess the power of checking the arbitrary exactions of kings. They prevented the formation of a class in the community capable of doing what in this age is done in Europe by authors, newspapers, and platform speeches. The reason that every Mohammadan Government has declined after reaching a certain stage of development is this absence of a territorial nobility—of a class of people who could organize a systematic resistance to the exactions of the king. There was no mode of perpetuating landed property, and therefore there

were no families at any time who possessed the willing obedience of their tenants and neighbours—the obedience developed by the sympathy and co-operation of successive generations.

The absence of a territorial aristocracy is the key to the decline of the Mogal Empire of India. There were many nobles and Ameers—but their Jaageers were all held on an extremely unsafe tenure—neither the Mohammadan law of succession nor the law of primogeniture was applicable to them ; nor had the incumbent Ameer the title to give or will them away to any of his heirs. They were held at the mere caprice of the king. So that there was always in existence a party intriguing against the reigning monarch.

While the succession to the throne among the semi-dependent Rajpoot States was determined by a regular rule and was never disputed, the succession to the throne of Delhi was keenly and anxiously contested between the various princes even before the Emperor was dead and continued to be contested till the most able of them had got the ascendancy and ruined the others. The Rajpoots had the power to marry several wives, but the Brahmanic Religion by its imposition of certain duties to be performed and certain ceremonies to be observed for the welfare of the deceased, gave an importance to the eldest son which in course of time developed among the Rajpoot States into the law of primogeniture. So that the succession was ever peacefully arranged.

But among those descendants of Teimoor, who ruled in India, the succession was always attended with warfare and bloodshed. The history of the Arabs, Persians, and Afgaans prove that the succession to the throne in Mohammadan countries could never be peacefully arranged. Neither among the Omèvis, Abbaasis, Faatemis, Safevis, among the Saamaanis, Daelamis, Eiyoobis, Gaznevis, nor among the Pathaans or Chagattas was there any established rule of succession to the throne. The sons of Abu'l Abbaas, the founder of the Bagdadian Empire, were set aside by his younger brother Mansoor. Haaroon Rasheed stepped to the throne upon the death of his elder brother Haadi and set aside his nephews. Maamoon disinherited the sons of his elder brother Ameen—while Maamoon's sons were in their turn disinherited by his younger brother Mo'tasem.

The sons of the founder of the Saamaani dynasty were set aside and disinherited by his younger brother—and so on with every important dynasty. Attempts were frequently made to oust the reigning monarch without waiting for his natural death. Maamoon rebelled against Ameen and eventually Ameen was killed in battle. Ebraaheem rebelled against Maamoon, but was defeated and had to lead a hide-and-seek life for a long time. The inevitable warfare for the throne among Mohammadan nations was due to the absence of a law of primogeniture ; the eldest son in the eye of the Mohammadan law was no better

than the younger sons. The exigencies of ever changing circumstances might in time have evolved such a law, but the practice of polygyny produced a complication which it was impossible to disentangle.

If Ameen and Maamoon of Bagdaad had been uterine brothers their mother or his natural feelings could have restrained Maamoon from taking up arms for fighting or slaying Ameen. Shaah Jehaan might have acquiesced in the claims of Prince Parveez to the throne of India and would have taken the side of Mahaabat Qhaan if the two brothers had been born of the same mother.

The fact is that the practice of polygyny prevented the evolution of the idea of primogeniture. For a mother, though she may give away everything to an eldest son when he is her own son, can never consent that her step-son should get all her husband's property and rank. The result is that in Mohammadan countries there are always two parties aspiring to the throne. Some nobles take the part of one wife of the reigning sovereign — some the part of another wife. Those Ameers who are deprived of their Jaageers are always ready to foment disunion and contention—for their chance of a re-grant of the escheated estates increases with the increased chance of mutual warfare among the various princes ; and every prince who successfully fought his brothers seized the Jaageers of those Ameers that had taken the part of his rivals and rewarded those that had followed his own fortunes.

If the Mohammadan civilization had developed a body of territorial aristocracy, there would in time have been less and less of bloodshed at the death of a monarch and the rule of primogeniture would at last have controlled the succession to the throne. The Government would have become really strong—with the power of the nobility as it base—and the progress of knowledge and freedom would not have been thrown back, interrupted, or postponed by the ravages of barbarians. But the practice of polygyny and the Mohammadan laws of inheritance prevented the development of the right of primogeniture and prevented the rise of an aristocracy ; the consequence was that the Mogal Empire brokeup into pieces as soon as the ability of the Chagataayi race declined—as soon as the earlier descendants of Baaber were succeeded by weak and imbecile princes.

In our age the stability of the Government is secured by the strength of the English nation—a strength derived from superior knowledge and discipline, from the recollection of numerous and noble achievements, and from the might of a powerful empire. The existence of the landed aristocracy is perhaps no longer required as an element of national stability—but as an element of national progress it will be necessary for ages to come.

The social and national discipline which enables an ordinary Englishman to succeed in life in the rank in which he is born and brought up has been entirely

inured to the discipline and conversant with the ways of modern thought, more varied information and more extensive knowledge will be in the possession of each individual. So that the accumulation of knowledge would be advanced. And the circle of diffusion would also be widened—for the ambition, the knowledge, the discipline, and the habits of energy, perseverance, and forethought that would be gained will raise younger sons to positions of respectable competence—and their children will therefore get an education, little, if at all, inferior to that of the children of eldest sons.

The law of primogeniture affects only immoveable property—and therefore it will not touch the trading and commercial classes of our community. But the territorial aristocracy, if it wishes to keep up its vitality, must be constantly invigorated by new blood ; and it is an equal, if not a greater, necessity to enable our trading and mercantile population to accumulate capital and to preserve it. There have been frequent examples among the Mohammadan community of Calcutta of men of inferior birth and position who have risen by means of trade to great wealth—but under the present laws of inheritance their stock was divided soon after they died and the capital dissipated within no long time.

Partnerships and joint-stock companies prove that commercial business cannot be carried on successfully or advantageously without a large capital—both fixed and floating ; but the Mohammadan laws of inheri-

tance altogether prevent the accumulation of capital. Our mental powers and moral feelings are not so well; balanced as to make joint-stock companies possible; and the only way to enable us to accumulate capital or to succeed in commercial undertakings is to give us a law of bequests as it would enable the owner of a firm to bequeath his trading concerns to the most able of his children. So that instead of a law of primogeniture we ought to have a law of wills—which is applicable to moveable as well as landed property and which can take cognizance of the particular circumstances of each individual case. The claims of affection, of the relative differences in the capacity and condition of children, and the claims of unusual incidents may all be considered in the case of a will, and therefore a bequest or legacy is likely to be more just than a primogenitive devolution of property.

A law of testamentary disposition of property will tend to improve his position and enable a trader or merchant to educate all his children—the younger sons will be able to compete for the rank and position of their eldest brother and will be able to give to their children an education but little, if at all, inferior to that which their eldest brother might be able to give to his sons. The aristocracy will therefore continue to be constantly invigorated from the ranks of the commercial classes—wealth and knowledge will continue to advance, our mental and moral resources will be

developed, and the energy and moral nature of the Mohammadan community will be improved.

To enable us to get a proper education and to reform our social organization it is necessary that we should have a law of wills. All Mohammadan Zemindaars are now taking steps to keep their property intact, but the High Courts of our country, instead of facilitating the process or going along with the spirit of the age, refuse to recognize filial wakfs or family settlements on technical grounds. The State alone can remedy the evil and enable our capitalists as well as Zemindaars to fulfil their wishes; the law of wills is only a permissive measure and cannot therefore be interpreted as even the semblance of what is called religious inteference—the State must now come forward and enable us to make posthumous bequests of our property.

When the practice of making testamentary dispositions of property should gain ground the practice of polygyny will decline. Though it is rare in North-Western India and infrequent in Beha'r and Western Bengal', it is painfully general throughout the convert-descended Mohammadans of Northern and Eastern Bengal'. But the practice of making wills will deter parents from giving away their daughters as second wives—they will not give away their daughter to a husband who, though he is rich, has his first wife still living, unless it is expected that the daughter and her children might secure a portion of the property;

and the woman herself will never agree to the marriage unless she has nothing to live upon. So that the changes silently affected by the law of bequests in the conditions of our life will noiselessly put the practice of polygyny out of vogue and in time the institution itself will altogether disappear. No active steps need be taken for its abolition ; as soon as a law of wills is passed the institution of polygyny is doomed.

The education which we should get will assist us in abolishing it. The history of the old civilizations of Asia, Africa, and Europe—the state of morals amongst them, and their progress and decline, will show to us that, though polygamy may have its uses in the early stages of civilization, its beneficient quality vanishes as soon as the circumstances which caused its rise disappear. The history of the progress of Arab civilization and its decline and fall will prove to us that a high state of civilization is incompatible with the institution of polygamy. And the history of England and Europe will convince us that polygyny must be abolished before we can reach that intellectual and moral development which is secured by a high state of civilization.

The practice has already declined in North-Western India and in Beha'r—and education and the law of wills will gradually weaken its hold on the Mohammadans of Eastern and Northern Benga'la. But there is another practice which is perhaps more pernicious and which is equally prevalent in North, Central,

and East Bengal' ; I mean indiscriminate divorce. This institution is clearly a concomitant of that of polygyny—and when the practice of polygyny should decline we may rely that the practice of indiscriminate divorce will also become rare. We may leave the control of divorces to the education of our community and to their knowledge of the ideas of English civilization ; but there are some measures which are urgently demanded and must be taken at once.

A divorce among the convert-descended Moslems of Benga'la is frequently the result of a burst of temper—of a mad freak—or of a desire to get a new wife. Everybody must admit that divorces of this nature should be brought under some control. Either the husband should obtain the decision of a court of law or he must support the divorced wife till she marries again or till either of them dies. It affects the general administration of the country to send women helpless and adrift upon the world without any means of support—and the State should either declare that no divorce will be recognized unless admitted and pronounced by a competent court. Or it must declare that no divorce should determine the right of the divorced wife to claim maintenance from her husband except on certain particular grounds.

For further meliorations of our society we must depend on that English education which we have not yet found the way how to acquire. I have in various

places of my different essays discussed the scheme of education which is suited to us under our present habits and aspirations. There must be special high schools for Mohammadan students, and the Boarding system should invariably be established—the present Superintendents of Mohseniya Madrasehs should be appointed Superintendents of the Boarding Departments and may also be appointed Principals of their respective institutions.

The high schools may be located at Dhaaka, Hugli and Moorshedaabaad—but there must be a college in Calcutta, and the Superintendent of the Boarding Department must be a gentleman of approved principles—with habits of energy and perseverance—and possessing a strong mind and resolute character. At present these conditions are fulfilled only by M. Kabeerad Deen Ahmed of the Board of Examiners—a gentleman acquainted with the history of Mohammadan literature and civilization, thoroughly imbued with liberal ideas, conversant with modern systems of education, and qualified by his mental attainments and moral faculties to win and command the respect of students. The principal of the Calcutta institution must be a European scholar of approved talents. A century of subjection, apathy, and ignorance has taken away from us the power of organization and government. We must for a few generations at least submit to be governed even in our educational organizations by the Englishman, whom centuries of inde-

pendence, energy, and success have disciplined into his present mould.

At present the funds of the Mohseniya legacy seem to be spent without any system. All boys in English institutions get two-thirds of their fees paid out of the funds; no discretion is exercised in making these payments. There are boys perfectly able to pay—there are boys who are frequently absent—Head Masters of schools make no selection, but admit all boys to the benefit of the Mohsen funds—whether they deserve or not. The indiscriminate payment of fees is sure to debase our character and demoralize the Mohammadan community. A proper check should be exercised if it is necessary to pay the fees of Mohammadan boys from the funds of the Mohseniya bequest. But this application of the funds will become unnecessary when denominational schools are established for our education. At any rate, the money should not be wasted. The income devoted to educational institutions by the heads of Mohammadan families should be dealt together with Mohsen funds in order to carry out the scheme of instruction which is most suited to our wants at the present day; and the schools supported by the Mohammadan gentry of Bengal' should be devoted exclusively to the tuition of Mohammadan boys.

The higher classes of the Mohammdans of Bengal' are placed in a position of peculiar difficulty. They cannot be considered gentlemen if they do not know

how to read and write the Hindustaani or Reqhta idiomatically. This is the cause that the Mohammadans of Bengala neglect the Bengaali language. In the North-West and Behaar the Hindustaani is the language of the educated classes of both sects, whereas in Bengal' it is the language only of the educated Mohammadan. Its friends claim for Behaar the recognition of its own barbarous jargon as the language of courts, pleadings and petitions—but they forget that the advance of civilization consists in the elimination or suppression of many dialects and the recognition of the dialect prevailing around the capital or already in possession of the field and its elevation to the position of the national language. It would throw back civilization for several ages if the Keltic languages of Wales, Ireland and the Scotch Highlands were to be allowed to develop into distinct languages contending with the English language for literary supremacy. And it would, on the other hand, help and advance civilization if we try to make the Assami coalesce with the Bengaali.

Similarly, it would help civilization if we take steps to merge the various dialects of Hindu India into the dialect most fitted to be the national language, by its literary development and power of expressing refined ideas, feelings, and habits—by its wide and general prevalence and its possession of the field. This language is the language of the Mohammadans of Hindustaan. The Government may be right in

abolishing the Persi Arabic alphabet from its courts—but the friends of Behaar are entirely wrong when they try to throw back civilization for several generations in order to ride a hobby.

The dialects of York and Cornwall may advance their claims against the dialect of London—the dialects of Chittagong and Silhet may contend under this theory with that of the Metropolitan districts of Bengal'. But it is the business of civilization to diminish the power of local or clannish peculiarities and establish the principle of community of aspirations—to diminish the force of insular or tribal feelings and develop the idea of nationality and patriotism. To adopt the phraseology of Darwin, it is natural selection that advances or evolves the favored dialect and puts down or suppresses the others—and as it would be a long waste of labor to make any of the Behaar dialects capable of becoming a literary language, the Mohammadan Hindustaani will certainly keep its place though it may have to change its alphabet.

But as regards the Mohammadans of Bengal' the question must be decided the other way. An insignificant minority alone speak the Hindustaani; all the Hindu population and the overwhelming majority of the Mohammadans themselves speak nothing but the Bengaali—so that we must have to give up the Hindustaani and adopt the Bengaali as a physical necessity. In all schools, therefore, the Mohammadan should learn the Bengaali language both be-

cause it is the spoken and written language of Bengala, and because it is the only means of elevating the lower ranks of society from the abyss of ignorance and superstition in which they are sunk and from the Cimmerian darkness in which they are immersed.

Very early after they settled in Bengal', the higher classes were obliged to marry the daughters of native converts—not because these converts had raised themselves by their energy and forethought to positions of eminence, but merely because the number of the higher classes residing in any locality was too small. This intermarriage continued for several generations, and the result is that the majority of higher Mohammadans in Bengal', are but little if at all superior to their lower neighbours in physical calibre, mental power, or moral capacity. It may be said of these high class Mohammadans, that like their low class neighbours they know no other language than the Bengaali, and cannot spare time or money to provide English education for their children. We must learn the Bengaali in order to be able to translate English thoughts and ideas into the vernacular and convey them to these immigrant-descended Mohammadans. In this way we shall eventually be able to provide a good vernacular education for the convert-descended Mohammadans of Bengala, to provide for them the means of acquiring real instruction and true knowledge, to provide for them an instruction which might remove them from the influence of Feraazi leaders

like the successors of Doodu Miyan and M. Keraamet Ali and from the influence of that trash which goes by the name of Mosalmaan literature in Bengal'.

This vernacular education—this education in the facts, ideas, and feelings of modern civilization by means of the vernacular—is the only education that will ever be within reach of the female sex, and, as female emancipation is merely a question of time, we must take care they are so educated that when the time comes they are found capable of preserving their virtue against temptation. In semi-civilized ages both men and women have imperfect natures—but when respect for woman and her weakness and the power of control over the passions become organic in the male sex, theParda or Gosha is no longer necessary. Natural safe-guards having sprung up artificial barriers are no longer necessary ; but we must take care that moral strength and purity of feeling become at the *same time organic in the female sex—so as to enable* them to overcome temptations and to preserve them from moral frailty and loss of virtue. And this development of the female mind and feeling can only be effected by giving her a real and true education—a high and pure morality.

In conclusion, I shall sum up the main points of the scheme of education that I advocate. *In the first place* all institutions supported from Mohammadan Funds should be devoted exclusively to Mohammadan education. *2ndly*, the Mohseniya Madrasehs should

be transformed. *3rdly*, all institutions supported by the Mohsen or other Mohammadan Funds should be devoted principally to the English education of the higher classes and the Vernacular education of the lower orders. *4thly*, a fund should be set apart out of them to encourage, for the benefit of our women as well as men, the composition of Vernacular works on the History, Literature, Philosophy, Science, and Arts of those Races who have figured in the world and left their mark on the development of man—especially works on the History of the progress and achievements of the English nation. This fund should also be devoted to encourage the composition of school primers on History and Science, Religion and Morals, the Arts and the Trades, so as to place within the reach of the female community and the poorer classes the latest information and the highest morals, the truest knowledge and the purest feelings that we possess. *5thly*, we must be empowered to accumulate capital and preserve our property. This provision is the most important in my scheme; for without such a law the best scheme of education must fail to improve our society. We must have means before we can educate ourselves, and the only way to enable us to acquire and preserve wealth is to give us a law of bequests. It will raise the condition and prospects of the trading and commercial classes—it will raise the hopes and aspirations of the landed gentry. The Mohammadans of all districts and all provinces in India

should unite and go up to the Government in a body. They may fail once—they may fail twice—to obtain the law, but they must repeatedly go up, and perseverance will be sure to crown their efforts. Such a law alone can give us the means of obtaining knowledge, developing energy and forethought, and disciplining and elevating our moral nature. And unless we succeed in getting a law of wills, we shall make no progress; and until we can establish such a law, we must continue to decline.

THE

MOHAMMADAN LAW OF SUCCESSION.

PART I.

1882-1883.

In 1876 I published an Essay on the Economical Condition of the Mohammadans of India. In this Essay I stated that they were every day becoming poorer—that they were not only making no progress in wealth, but were actually losing what they had. The evidences of their comparative poverty are manifold and various. Sir George Campbell assumed the fact in all his resolutions on education; the late Mr. Woodrow knew very well that the Mohammadans of Bengal' were poor, and based many of his proposals for the improvement of Mohammadan education on that knowledge. Navab Abdul Lateef Qhaan has at various times urged upon the Government the necessity of admitting Mohammadan boys in schools and colleges at lower fees than those paid by Hindu boys, and of inducing them to continue their studies by the grant of small stipends. A few years ago Seiyed Ahmed Qhaan had an article in the Tahzeeb-al Aqhlaak on the poverty of Indian Mohammadans, and recently the Mohammadan Association of Calcutta have taken it for granted in their debates and discussions.

The fact is thus universally admitted—but no one has cared to trace the causes that have brought it

about. I attempted a discussion of them in my Essay of 1876, and I ventured to state that these causes lay in our own ideas and customs.

a. The literature of our theology and morals condemns saving and economic habits a hundred times more than it condemns extravagant habits; our theologians and moralists denounce abstinence in the most unmeasured terms, while they have almost nothing to say against profuse and extravagant expenditure. So that in course of time expensive habits came to be regarded as signs of a charitable disposition, while economic and provident habits became synonymous with selfishness.

b. The anathemas against interest on money are so black and so dire that the Mohammadan is practically debarred from resorting to this source of wealth: he cannot have recourse to it without drawing upon himself the evils of excommunication or forfeiting the regard of his friends and neighbours.

c. The Mohammadan Law of Intestate Succession involves a minute subdivision of property—a subdivision that is absolutely compulsory, while there is no Law of Testamentary Succession capable of checking or modifying its operation. So that in two or three generations a share represents no more than the barest subsistence.

The erroneous ideas that mankind hold on any subject generally continue unchanged till they have practically learned the evils those ideas entail: the

value of economy must be learnt only by a practical experience of the mischiefs of extravagance. I think it may now be said without fear of contradiction that we have gained such an experience. I believe the Mohammadans of India have now learnt that the prohibition against interest, while it closes a legitimate source of wealth to themselves, has the effect of adding to the sources of wealth of other classes of Indian society ; and that the prohibition injures no other classes but themselves, and is therefore suicidal to their own interests. This conviction has, within the last hundred years, led to the issue of real or pseud-Fatwas tending to legalise interest. Some Muftis say that India is a *daar-al-harab* and that in India, therefore, interest is lawful—others say that it is not prohibited to take interest from persons beyond the pale of our religion.

I can boldly say that at present the majority of Indian Mohammadans have no practical aversion to interest—however much they may dislike it in theory. Zemindaars sue for interest on arrears of rent, on money never even lent ; and our Shahs and Maolas do not hesitate to lay out money in securities or invest it in banks.

It is clear, then, that there has been a great change in our notions regarding the moral character of interest, and I entertain no doubt that further changes will hereafter take place in the desired direction. But the most active cause of our decline in wealth and social

importance lies in the laws of our inheritance—laws that make it compulsory to divide and subdivide property, and thus bring about its total annihilation in no long time.

In countries inhabited wholly by Mohammadans the evils caused by these laws are not so serious—for the social position vacated by a Mohammadan cannot be occupied by any but a Mohammadan. But even in such countries those classes are the most affluent whose religion or rules of conduct do not forbid them to take interest: the Jews, the Armenians, the Paarsis, and the Greeks, who form the class of money-lenders in Persia and Turkey, are also, generally speaking, the wealthiest classes.

The case of India is much worse. In India the accumulation of wealth is easier for a Hindu than a Moslem—as the former may lend out money on interest without the slightest risk of social disapprobation, or state interference, and, what is more important, his disposition and habits are naturally economical. He can at the same time provide measures to keep his property intact after his death and to prevent its breaking up into fragments. So that in India the social position vacated by a Mohammadan squire is occupied, not by a Mohammadan squire or merchant, but by a Hindu squire or merchant.

The necessity of modifying our laws of succession was not strongly felt in purely Mohammadan countries—but in India some modification of them has

always been urgently demanded. The Pathaan and Mogal Kings of India were naturally desirous of surrounding their thrones by Ameers — they created, for the support of these nobles, jaageers or fiefs which were not inherited in the usual orthodox way but were, generally speaking, re-granted to one of his heirs or kinsmen.

Not only was the Government alive to the necessity of protecting the body of Ameers from losing their rank and position — but classes of the Mohammadan community here and there contrived to control the mischievous consequences of the Mohammadan laws of inheritance by adopting various customs (as the different occasions required and enabled them to do) in order to check minute subdivisions of property. But, excepting the small body of Qhojas, Bohras, Maemans, Mopelas, and excepting small sections of the convert descended Mohammadans of Bengala, the Mohammadans of India have absolutely no provision whatever for the preservation of family domains.

The prohibition against interest on money only prevents us from adding to our wealth — it does not disable us from keeping what we have. But the laws of our succession positively deprive us of the power of preserving property — they actually lead to its rapid and complete dissolution. While every Mohammadan may now lend out money on interest and every Court is bound to give a decree for interest even on mere arrears of rent, no Mohammadan may execute

a testamentary assignment of property, and no Court must declare a Mohammadan will to be otherwise than invalid under any circumstances. So that what is in fact the most important cause of our economical, and therefore of our social and political, decline, cannot be removed but by the interference of the State.

To lend out money on interest is, moreover, only a particular trade, and is thus but one of the many modes of accumulating wealth, though perhaps the easiest and the safest. But the absence of the power of making wills affects every individual of our community and diminishes the value of every income—it has the positive effect of destroying landed estates within no time, even though they should be large. The State has put us in the way of recovering interest on money, but refuses to assist us in what is infinitely more momentous—refuses to help us in preventing the actual destruction of our wealth.

To lend money on interest is considered in theory to be the greatest of sins, yet the State assists every Mohammadan in recovering interest. To make over property undivided to one or two heirs is no sin whatever—for every Mohammadan has the power to alienate the whole of his property during his life-time, even to a perfect stranger, as a sale or absolute gift—yet the State will not let him do so at his death even to his heir.

For want of a law of bequests, the Mohammadan gentry are resorting to equivocal measures in order

to keep their property from being frittered away—to devices liable to frustration by incidental, as well as intentional, causes. Measures of this uncertain and insecure nature have been adopted in Dhaaka, Baakerganj, Calcutta, Raajshaahi, Chittagong—and every Mohammadan who has had his eyes open will probably be able to recall such instances all over Bengala. The recourse to these measures—measures that are often not strictly justifiable—proves that the Mohammadans of Bengala are desirous of having a law of entails or a law of wills.

If the Government is doubtful of this fact, it may convince itself by calling upon the Moslem gentry for an expression of their opinion. If it should do so, it will at once find that the Moslem gentry are earnestly desirous of having a law of entails or of wills enacted in order to enable them to preserve their family property and their social rank.

The principles of the law of entails are perhaps not now in favor in England—but the circumstances of India and England are different. Economy, energy, forethought—qualities wanting among Hindi Mohammadans—characterise almost all classes of Englishmen; whilst improvidence, inactivity, unthrift—qualities abundant amongst us—are quite exceptional in England.

As I said in my Essay on the Decline of Mohammadan Civilization (published a few months ago), it is a matter of indifference to English society, in the

present age, whether property was left wholly to a single heir or was divided among several heirs; for the qualities that lead to the acquisition and preservation of wealth have become organic among Englishmen, have become part and parcel of the English mind, have become matters of hereditary descent with the English people. But the Hindi Mohammadan has yet to undergo such a discipline and has yet to acquire these qualities; and therefore laws of succession that may be suited to Englishmen in India are not necessarily suited to Mohammadans in India.

The fact is that laws are good or bad relatively—what in the same country is good for one age is not good for another, what in the same age is good for one country is not good for another. The law of freedom from arrest of members of parliament was imperatively necessary in England in the seventeenth century—it has no longer any use at the present day. In the fifteenth and sixteenth centuries it was necessary that the debates of parliament should be secret—now they are immediately reported to the minutest details.

In England, the power of the sovereign is under control, and the traditions regarding its limitation are so strong and universal that the enactments passed at various times for curtailing it may be left out of the Statute Book without the slightest danger to the nation. In Russia it is only now that attempts are being made to limit the power of the sovereign, and

therefore enactments conceived with the object of defining it are most important. In England Judges of all Courts are above suspicion, and no laws are now necessary to secure their honesty. In Turkey Judges and Kaazis are amenable to bribes and threats, and laws conceived in the spirit of making them independent are most important.

Similarly, the law of primogeniture and entails was necessary to England in the thirteenth century, for instance, though there is no necessity for it now. Both because the barons were placed amongst a hostile population, and because they had to curb the inordinately large power of the Norman King, the destiny of the English nation would have been different if the fiefs and estates of feudal lords had been regularly divided among all their heirs; but now, conditions are altogether changed — the power of the King is no longer formidable, and Normans and Saxons have long since become fused into an united nation.

The law of primogeniture or entails will not probably be required by the Mohammadans of India two centuries hence; but at present such a law, or an equivalent of it, is absolutely necessary, in order to enable them to retain their rank and position—I had almost said, their very existence.

Wherever the application of the law of entails has been restricted, that of the law of bequests has been favoured and extended; in other words, the application of the rights of primogeniture or entail has only

declined simultaneously with the increased development of the right of bequests. When Hindu zemindaars throughout India are allowed to take advantage of the law of primogeniture and entail, there is no conceivable reason why Mohammadan zemindaars should not be allowed the same privilege. But if the spirit of the age is against entails we ask the State to give us a law of wills, and the spirit of the age is unequivocally in its favor.

Of all classes of people under the British Government it is the Mohammadans alone that have no power to make testamentary dispositions of their property; Christians, Jews, Paarsis, Hindus — all possess such a power; those Hindus that do not enjoy the power by especial enactment are frequently governed either by the principles of primogeniture or by customs (akin to the joint family system) which practically enable them to leave their property undivided and compact. But Mohammadans are so circumstanced in India that in two or three generations the property of a Moslem gentleman (even though large) dwindles down to the barest subsistence.

Unless the distribution of wealth is governed among different nations by similar principles, one nation is likely to possess advantages over another in the accumulation of wealth. The principles of free trade have been thoroughly established in England; but they have been established long before their proper time—long before the industrial development of

the civilized world could render such a course beneficial to England. For in America, France, and Germany, the principles of free-trade have had but partial application. English producers are therefore placed at a considerable disadvantage, are now (after having suffered for some time) clamouring for what are called reciprocity principles, and are soon likely to obtain rights that are no more than simply just under the circumstances. In the same way the different classes of a people must be governed by similar laws in the distribution of their wealth.

But, while all other classes have the means of keeping their property undivided, the Mohammadans of India have no power to make testamentary dispositions of their property. They have had a practical experience of the disadvantages of such a want— an experience that has thoro'ly satisfied them of the necessity of a law of wills. Their recourse to various doubtful expedients for the purpose of preventing the minute subdivision and ultimate disappearance of property proves that the Mohammadan gentry are clearly desirous of having such a law enacted for them.

I believe it will readily be admitted that an order of gentry is as essential to the Mohammadans as to the Hindus of India — and I believe the Government will not knowingly or willingly let the Mohammadans of India drift to general ruin. The sunset law of revenue payments took completely by surprise a class of people who have always been remarkably

prodigal. A great many Mohammadan zemindaars could not meet the demand and were sold up, and the want of a law of bequests is rapidly causing the disappearance of the order of squires amongst us, at least in Bengal'. If it is not right that they should disappear, the Government should at once step forward and legalise for them the freedom of bequests. A law enabling us to make posthumous assignments of our property is now absolutely necessary for the future welfare of our community.

If the Government should doubt whether such a measure is demanded by the Mohammadan community, let it make the necessary enquiries from Zemindaars and Taallukdaars —but it must no longer stand aside and see the Mohammadans of India hopelessly ruined: it must no longer cover its indifference and inaction with the convenient and plausible excuse of religious neutrality.

I think I can show that the British Government is, in some measure, however unintentional, responsible for the decay of our gentry, and that it is consequently bound to interfere in order to prevent further decay.

a. During the Moslem period neither person nor property was secure; no man was safe against the delegates or emissaries of the King—no man was safe even against his powerful neighbour; and the frequent depredations of marauders and the constant internecine wars of those ages, prove that the Go-

vernment itself was incapable of protecting its subjects. This manifold insecurity naturally tended to keep all the members of a family united together so as to be able to defend the family more successfully—and thus whatever property there was continued undivided from generation to generation.

The order and stability of the British Government and the sense of security thereby engendered have taken away the necessity of an united family. A gentleman dies, his sons keep together for a few years, subjects of contention arise, the brothers separate, and the property is divided. While formerly these disputes were settled as best they could be in order that the brothers might be able to deal more effectually with the more serious danger apprehended from the officers of the King—from powerful neighbours—or from public enemies, now they are allowed to grow unchecked and at last lead to divisions in the family and divisions in the property. While formerly the members of a family desired union in order to be better able to defend themselves, and thus passed over many causes of mutual inconvenience as of no serious moment, now there is nothing to fight against, and all such causes of annoyance are allowed to accumulate, gradually assume a more and more serious aspect, and at last produce family disunion.

b. The influences that were evolved out of the weakness and disorder of the Mohammadan Govern-

ment—the motives that led to the adoption of customs here and there by small sections of the Mohammadan community, in modification of the substantive law of Arab succession—these influences and motives ceased to operate with the firm establishment of the British Government. During the Moslem period justice was difficult to obtain; courts of law were few, and far removed; judges could be bribed and threatened. So that suitors generally tried to have their disputes settled by their own tribal heads, or their religious leaders, or by both combined, instead of laying them before Kaazis. Arbitrators seldom, if ever, decide according to the strict letter of the law; so that, in course of time, there came to be adopted certain special rules or customs amongst particular sections of our community. The establishment however of Courts of Justice in the interior has prevented the further operation of these principles and has prevented the development of local laws, affecting the intestate and testamentary succession of the Mohammadans of India.

Amongst the convert-descended Mohammadans of Eastern Bengal' the Arab law of succession never thoro'ly took root. It was uncongenial to the ideas and usages they had inherited from their forefathers—so that even at the present day daughters do not frequently get any share, and the eldest son invariably gets a larger share than other sons. Amongst these native Mohammadans there were always at work some

rules modifying the principles of the Arab law of succession; but the establishment of Courts of Justice and Law in the interior, by the British Government, and the consequent abnormal influx of legal practitioners versed in the Arab law of succession, have prevented the growth of these rules into customs having the force of law.

That Mohammadans in India are unable to preserve property is, therefore, in some part, due to the British Government. It is responsible, though unintentionally, for the decay of our gentry; and, as far as possible, it is bound to check the minute subdivision of property which threatens to destroy the entire Moslem gentry of Hindustaan at no distant date.

It is not much that we want at the hands of the Legislature. A section added to the Indian Succession Act allowing those Mohammadans who might be desirous of doing so, to make testamentary dispositions of their estates, and applying to such Mohammadans all provisions that relate to wills, probates, &c., would be quite sufficient. To obviate subsequent uncertainty and to prevent future litigation, Mohammadans desirous of exercising testamentary powers, might be required, as a precautionary measure, to file a declaration to that effect in a district registration office. This is all that we require for our purpose; but though it is not much for the State to do, upon it depends our very existence as a unit of Indian society.

If the Government is apprehensive of wounding our religious susceptibilities, it must observe that the measure is demanded by ourselves. It must keep in mind that the duty of a Government is to interfere in cases in which a passive attitude is likely to bring ruin upon any portion of its subjects. It must not forget that it has already interfered when it has thought fit to do so. Under the Arab law an apostate cannot inherit—but Act XXI of 1856 declares that "so much of any law or usage as inflicts on any person forfeiture of rights or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing any religion or having been excluded from the communion of any religion—shall cease to be enforced as law" in the Courts of British India.

This section does not affect a mere matter of detail, but encroaches on the very principles of Arab succession—and it benefits those who recede to the Christian faith. The State having interfered already for the sake of others, cannot consistently refuse to interfere for our own sake—having interfered for the sake of Christians, they cannot, without laying themselves open to the charge of partiality, refuse to interfere for the sake of the Mohammadans themselves. Having already interfered on an occasion on which they could never have obtained the consent of the Mohammadan community, the State cannot plead that they are averse to interfering in a matter in which

such interference is demanded by the Mohammadans themselves.

1. All classes of people in India have the power of making bequests or otherwise keeping their property entire, except the Mohammadans.

2. The want of such a right is gradually but inevitably uprooting the body of our squires, and destroying what influence the possession of property by them gave to the Mosalmaan community in general.

3. The Mohammadan gentry have now become perfectly alive to the dangers of a minute subdivision of property, and the various shifts they now adopt to ensure the possession and management of their estates in an undivided state prove that they are earnestly desirous of having a law such as might enable them to preserve their family domain and their family rank.

4. The order and strength of the British Government have destroyed those motives that kept the joint family system in force, and the exotic and abnormal development of law courts and the consequent too great influx of lawyers prevented the operation of those influences that led, here and there, to the recognition of various customs modifying the principles of the Arab law of succession.

5. Our Rulers did not hesitate to modify one of the first principles of Mohammadan inheritance when such modification was required in the interests of Christians—of those who adopt the religion professed by themselves; they can scarcely, without being liable

to the imputation of partiality or injustice, refuse now to modify our laws when such modification is absolutely necessary for our own interests.

The interference of the State is all the more needful that there is now no legitimate way in India of giving effect to the wishes of the Mohammadan community. They are strongly desirous of a change in the law of testamentary succession ; but even if owners of property be unanimous in favour of entailing their estates, they have no means of giving effect to their views but thro' the action or interference of the State. Under their own law, Hindus have the power of giving away their property absolutely during their lifetime, unless restrained by long-established clan or family customs, but they did not possess the power of making posthumous bequests. In Bengal', however, the desire of perpetuating landed property and family name gradually brought into vogue the practice of making testamentary dispositions of property—and, moved by the spirit of the age, the highest court of the land decided in favour of Hindu wills.

But the power of the Hindu of Bengal' to make a testamentary disposition of his property was not upheld without tedious and costly litigation—without considerable doubt and hesitation. It was, therefore, thought proper to frame a substantive law on the subject—an express enactment placing beyond doubt the right of every Hindu in Bengal' to make a will. The custom of primogeniture prevails amongst many

families outside Bengal', and, therefore, it was not thought necessary to give the other provinces of India the benefit of the enactment. But these are mostly old families — families whose wealth and importance date long anterior to the British conquest. The establishment, however, of the British Government soon gave a considerable stimulus to trade and commerce; many new families have thus acquired wealth and sprung into eminence; it is the large towns that favor mercantile activity and enterprise, and these new families, accordingly, reside in towns. The provisions of the Hindu Wills Act were therefore made applicable to those Hindus who reside within the Presidency Towns as well as those who reside within the jurisdiction of the Lieutenant-Governor of the Lower Provinces.

The Mohammadans of India are all but unanimous about the necessity of a measure enabling them to preserve their property. The enactment may be such as has been passed for the Hindus of the Presidency Towns and of Bengal', Behaar, Oressa, and Assam— or it may be a law applying the rules of primogeniture to our estates—but it must be such as to enable us to perpetuate our family property and thus to preserve our family rank.

There is a principle in the Mohammadan Law itself, which might, if judiciously applied, render the estates of our gentry as secure perhaps as necessary; but the principle of family *wakfs* has been so rarely availed of in India and has received such scanty notice

from European writers that its very legality has come to be questioned. In the case of Fateh Beevi *versus* Daamodar Premji (reported in the Law Reports of June 1879) the Bombay High Court held it doubtful whether family *wakfs* amongst the Mohammadans of India could be upheld.

More recently in the case of Hameed Allah Qhaan *versus* Lutf-al-Hakk (reported in the Law Reports of May 1881) the Calcutta High Court have held that to constitute a valid *wakf* there must be a dedication of the property solely to charitable purposes, and Judges Norris and Tottenham have refused to recognize the validity of a family endowment on these grounds.

The Mohammadan Law recognizes two almost diametrically opposed kinds of *wakf*—the charity *wakf* and the family *wakf*. The large number of charitable foundations bequeathed by the Mohammadan nobility and gentry all over India early directed the attention of European lawyers to the law of Charitable Endowments. But the Law of Filial Settlements did not attract much attention owing to their infrequency, their private nature, and their unobtrusiveness. So that European treatise on the Mohammadan Law of appropriations never give to the subject of Entails or Filial Settlements the space that its importance demands, and the result is that eminent Judges like Messrs. West and Pinhey, of Bombay, and Messrs. Norris and Tottenham, of Calcutta, doubt the legality of *wakfs* or appropriations except for charitable purposes.

Hamilton in his translation of the term *wakf* wrongly restricted its legal application to appropriations "of a pious and charitable nature," and he was followed by Macnaghten, who rendered it by the English term "Endowment." In reality the word is much more comprehensive and includes settlements on self and children. The authority, however, of such great names as those of Hamilton and Macnaghten has rendered the principle of entails or family *wakfs* of questionable application—nothing but an authoritative declaration by the State will now place the subject on a satisfactory basis. But as the principle of entails is not now in favour with advanced British thinkers and statesmen, it may be replaced by a law of wills—a law which allows larger scope to individual discretion, and would on that account be probably more equitable.

If the State should wish to conform to the ideas and feelings of the age in regard to property, it must legalise for the Mohammadans of India the power of making testamentary dispositions of property—if it wishes to avoid even the mere semblance of interfering with what are called religious customs, it must place beyond doubt the legality of filial settlements. But whether it be in the form of *wakfs* or in that of wills, the State is bound to make such a provision as may enable us to preserve family property and to keep up our rank and position among the social units of Hindustaan.

Regulation 11 of 1793, Regulation 44 of 1795, and Regulation 10 of 1800, prove that the circumstances of the Mohammadan Government in India had already given rise to the custom of making landed property devolve upon a single heir. The families of Belgraam and Maarhara who are Seiyeds by male line have even now a custom which excludes daughters from inheritance. It is not therefore anything absolutely new that we are asking the Government to do.

Seiyed Ahmed Qhaan may be called the leader of that small section of Mohammadans who hold liberal views on religion and education, on economical science and social science. I believe he contemplated bringing forward a bill in the Legislative Council such as to provide for the preservation and continuance of property among the Mohammadan gentry. But so far as I understand the measure that he proposed to bring forward, I am of opinion that it is wholly insufficient as a means of assisting our economical advancement or social progress.

His experience of Indian society, his knowledge of human affairs, the grasp of his intellect, and the range of his imagination are probably greater than those of any Mohammadan now living, and are, of course, immeasurably superior to mine ; but with due deference to his undoubted abilities, abilities of which Hindi Mohammadans might well feel proud, I am constrained to say that his proposed measure is calculated

to affect only an extremely small section, and is therefore not likely to do much good to our community.

Every Mohammadan has the right of creating *wakfs*, whatever be the extent of his property. If Seiyed Ahmed Qhaan proposes to limit the exercise of this right only to those who own compact and large properties — if the bill which he had in hand meant that only those who fulfil all the conditions prescribed should have the power of making settlements — the measure that he contemplated is clearly a backward move, as it circumscribes a right which already exists under our law without any limitation. But if, reserving to the general body of Mohammadans the right that they enjoy under their own law, Seiyed Ahmed Qhaan meant to afford greater facilities to the possessors of large and compact estates, his contemplated measure would have done some good. But what is the amount of good that was likely to be gained?

In Bengal' there are probably no more than half a dozen families who fulfil all the conditions required by Seiyed Ahmed Qhaan's contemplated law. Not a few will be able to show the required income—but most of them have their incomes distributed over estates in which they have only fractional interests. Not a few will be able to show ownership of whole estates or mehals—but most of the incomes derived from whole estates are smaller than the income prescribed. The incomes of most Bengaali zemindaars are, moreover, derived partly as proprietors and partly

as sub-proprietors—but incomes derived from subordinate or dependent tenures are excluded from Seiyed Ahmed Qhaan's law.

The good done in Bengal' at least will thus be extremely small. It is apparent also that even outside Bengal' the good gained will not be anything considerable. Whether for this inconsiderable amount of good it is worth while to move the Legislature for the enactment of a cumbrous and complicated law, is a matter for consideration. We must also consider whether it would be right to establish an invidious and unnecessary distinction between the zemindaar with a few compact mehaals and the zemindaar with many fractional mehaals. So far therefore as the principles of the proposed measure are considered, I think that it is wholly inadequate. But we must take also the details into consideration in order to estimate the value of the measure which Seiyed Ahmed Qhaan proposed to lay before the Legislature.

One of the worst effects of the Arab law of succession is that all the children of a zemindaar are brought up in the certain expectation of a share of his property; this sure expectancy of a share which each heir entertains naturally prevents him from exercising his energies to any great extent. Seiyed Ahmed Qhaan proposes to assign subordinate positions to younger sons, probably under the impression that self-respect will lead them to exercise their energies and thus to secure independence. But inferences drawn from the

conditions of an Englishman's life will not be applicable to the conditions of life of a Hindi Mohammadan. In England the sense of self-respect is, owing to the nurture of generations, so keen and so strong that no younger son will ever accept a dependent position. But the sense of self-respect among the Mohammadans of India is blunt and weak; and the history of the Mohammadan gentry of India (especially of Bengal') gives us no hope that younger sons will refuse to accept a dependent position.

On the contrary, what Seiyed Ahmed Qhaan proposes is likely to make younger sons even more apathetic than they now are. For at present the children of a Zemindaar, as soon as they get a share of his property, acquire certain cares and responsibilities—which call for the exercise of some at least of their faculties. But Seiyed Ahmed Qhaan proposes to make annuitants of younger sons — in other words, to divest them of all care and responsibility and thus to prevent them from exercising even the smallest of their faculties.

On the whole, therefore, if there are advantages to be derived from the proposed law, there are also evils to be apprehended; and the evils are considerable while the advantages are but small. I believe that as regards the landed gentry a better plan than what Seiyed Ahmed Qhaan proposed would be to declare the undoubted and indisputable right of all Mohammadans to make filial *wakfs* and to impose upon all courts of law the duty of recognising and upholding them. The

rest should be left to natural education, to the discipline of life, and to time.

Some such provisions as these are sufficient to place the law of family *wakfs* or Mahommadan entails on a satisfactory footing without trenching on rights that we already enjoy. But they are almost as inadequate to the wants of the Mohammadan community of India as the provisions proposed by Seiyed Ahmed Qhaan — they ignore the interests of the mercantile classes altogether. The law of family *wakfs* is suited only to the preservation of landed property; but Seiyed Ahmed Qhaan does not require to be reminded that unless the superior classes are constantly invigorated by fresh accessions from the lower classes no people or community can be said to make any real advancement in civilization — that unless members from the lower classes get constantly admitted into the ranks of the higher classes thro' their own worth and achievements, no society can even preserve what measure of civilization it already possesses.

Looking to England, for instance, we find that the nobles count among themselves not only some of the oldest families of Europe but also some families who have entered the peerage only during the present generation — that they count among themselves not only families of historic renown but also families whose importance dates but from yesterday. Looking nearer home we find that most of the Bengaali or Hindu landed gentry of Bengal' represent new fami-

lies and owe their present importance to success in mercantile undertakings. This process is a clear indication of the real progress that is taking place in Bengaali society or in the Hindu society of Bengal'.

It is of the greatest importance, then, that the trading and commercial classes amongst us should be able to ensure the continuance of their prosperity. At present a Mohammadan may, by dint of great labor and much forethought, become a distinguished merchant — but he can by no means hope that his heirs will be able to enjoy his prosperity. For when he dies, his sons, tho' for a time they carry on the concern together, are unable long to agree among themselves — consequently the capital is soon divided and the father's business ruined. It is not that the Mohammadans of India are unable to make money. Individuals from the lower classes of our society are constantly improving their condition and rising into importance. Many Mohammadans (whom it is quite unnecessary to name) rose into importance in Calcutta during the last generation and amassed considerable wealth by means of trade and commerce—but their prosperity died away with themselves. Similarly there are Mohammadan merchants now in Calcutta owning large and prosperous concerns — but their wealth will assuredly not survive their death.

The present state of our law of succession is so mischievous that it is impossible for the wealth and prosperity of new families to become permanent or

long endured. It is impossible, therefore, that the Mohammadan community of India should be able to make any real or permanent advance. There are sections of the Mohammadan community in the Bombay Presidency who are particularly successful in mercantile undertakings—and the reason is obvious. It is because they are not wholly governed by the Arab law of succession; they have usages or customs which modify the application of that law and which do not hinder the continuance of success in trading and commercial business.

In my opinion, then, the measure proposed by Seiyed Ahmed Qhaan was perfectly inadequate to supply our wants. I think he failed to realise the strength and immensity of the evils that surround our position in India—for he has taken cognizance of our position only in its political bearings. He has ignored its social bearings, and these are infinitely wider and more powerful in their effects. I believe it therefore necessary that we should have the right conferred upon us of devising property under wills—the right that has already been conferred on the Hindus of Bengal', Behaar, Oressa, and the Presidency Towns—the right that has always been owned by Christians all over India. The power of family or filial *wakfs* will be of no avail except in cases of landed property—but the power of making wills will be useful to the trader, the merchant, the banker, as well as the landed proprietor.

The measure that Seiyed Ahmed Qhaan proposed does not disinherit younger children ; it is, moreover, only a permissive measure, and provides for a reversion at any time to the ordinary rules of inheritance. But tho' such a law has prevailed for some time past, at least in Awodh, and such a custom obtains among the clans of Belgraam and Maarahra who are Seiyeds by male line, the Mohammadans of Patna seem to be opposed even to this inadequate measure. They say "the argument in favor of the bill" of Seiyed Ahmed Qhaan "assumes without any fact or reason that the subdivision of property under the Mohammadan law of inheritance is the cause of the decline of Mohammadan families." It is rather late in the day now to deny that the principal cause of our social decline is what is now partially sought to be remedied, *viz.*, the subdivision of property and capital.

No Mohammadan who has observed the course of events amongst the Mohammadan society of Bengal' during the last hundred years could have failed to remark the disappearance of many notable families—the displacement of them by Hindu families—and the general poverty of men of good blood. No Mohammadan who had observed these facts could fail to discover the causes of this general social decline. But the Mohammadans of Patna could not, of course, be supposed to have any leisure to observe what was going on about them. For they have their naaches or dancing parties to attend; they have to see their Commissioners, Judges, and Magistrates almost every day ;

they have to present addresses to Governors and Lieutenants. They have these and such other important things to do, and how was it possible for them to realize such a petty matter as the present condition of Mohammadan society in India ?

That the decline of Mohammadan families is mainly due to the subdivision of property under the Mohammadan law of succession is supported by so many indubitable reasons that it is singularly strange how the Mohammadans of Patna could have doubted the fact unless their faculties had been weakened by their patriotic use of opium. They further urge that the bill (tho' it only permits the exercise of certain powers and tho' it allows subsequent reversion to the ordinary rules of our law) is "an *innovation*," and "will be in direct contravention of the statutes under which the British Government have pledged themselves to respect the Mohammadan law as to heritage and contract."

They forget that the law of heritage has already been modified in favor of apostates, and that the law of contract has also been largely modified. They go on saying that "those who advocate the measure are not, for reasons of their own, in favor of the present law of inheritance which, however, forms a part of the Mohammadan religion, and which has prevailed in all Mohammadan countries during the last thirteen centuries." Very true, indeed ; and therefore it is that Mohammadan societies are everywhere declining in national and political importance—whether in India, in Afgaanistan, in Persia, or

Turkey, in Egypt, in Tunis, or Algeria, in Boqhaara, in Kaashgar, in Yaarkand, or China.

Unless wholly blinded by bigotry; like the Mohammadans of Patna, no Mohammadan can fail to admit that this general decline of Mohammadan society must be due to general causes—to causes not confined to any particular country. It is not because the Christian conception of God is loftier, or the Christian conception of morality is purer, that Christian nations are rapidly increasing their wealth, improving their knowledge, and consolidating their independence. It is because Islaam is not only a religion but is also a social system, that Mohammadan countries are one by one losing their independence. Christianity did not appoint the relation between man and man, and therefore this relation is from time to time re-adjusted as changing circumstances require, and thus the progress of humanity continues unchecked. But Islaam prescribed the relation between man and man as well as laid down the relation of man to God; so that in Mohammadan countries the readjustment of social relations demanded by change of conditions is absolutely prevented. And this absence of readjustment is the cause of the decline of Mohammadan civilization and Mohammadan independence.

It is high time therefore that men of reflection amongst us should point to the Mohammadans of India the means of dissociating the Religion of Islaam, which is thoroughly transcendental and therefore

immutable, from its social system which is no more than relational and is therefore not only modifiable but requires to be constantly modified. And do what we may, Mohammadan communities will continue to decline in the scale of civilization until they are able to separate Civil Law from Religion—until they are able to add legislative functions to the State so as to empower it to make alterations in our Shara'.

For at present the State in countries governed by Mohammadan sovereigns has no legislative functions whatever; in Mohammadan countries the sovereign never has any motive or occasion to consult a legislative body. This want of the necessity of a consultative body has prevented the rise of a representative body in the State—has prevented the development of representative or popular institutions. The result is that no Mohammadan people has ever been able to provide any check against the arbitrary power of the king—no Mohammadan king has ever been able to identify himself with the people.

No Mohammadan State will be able to represent the people—no Mohammadan people will become an united nation—no Mohammadan nation will be able to make any real or durable progress until it should become a constant practice among Mohammadans to modify their domestic and social institutions and their civil and political laws, or to *innovate* upon all those subjects that do not fall within the scope of Religion in its purest sense. In the present case, however, the

measure proposed by Seiyed Ahmed Qhaan is not an *innovation*. The work of Niel B. E. Baillie on Mohammadan law is sufficient to convince the Government that the Mohammadans of Patna are entirely wrong. But then they say that, if the provision is in accordance with the principles of Mohammadan Law, it is superfluous. The practice of making *wakfs* on children has, however, fallen into desuetude, at least in Bengal,' and the law itself is in such a state of uncertainty thro' the treatment of Hamilton and Macnaghten, and on account of the decisions of the High Courts, that an authoritative declaration by the State is now necessary. It is also necessary to specify the class of courts through which family *wakfs* may hereafter be rendered valid and obligatory; this confirmation is essential, according at least to Kaazi Abu Yoosaf, exponent of Imaam Abu Haneefa, and the Legislature alone can now enable us to obtain it.

The Mohammadans of Patna further say that "in legislating principally for Europeans and Eurasians domiciled in India the British Government in this country has ere long thought fit to throw aside primogeniture as a rule and to enact in its stead an equitable rule of succession, much akin to the rule of succession as laid down under the Mohammadan Law." But the Mohammadans of Patna have conveniently failed to observe that the Indian Succession Act provides for testamentary as well as intestate succession. If the British Government declines to create

an estate in tail on its own motion or responsibility it does not prevent an European or Eurasian landowner (domiciled in India) from bequeathing his estates to an elder son—it cannot prevent this process from being adopted at every successive stage—it does not prevent landowners from creating estates in tail at their will and on their responsibility. The Government has even thought fit to extend this power to those Hindus who have no family customs to check the division and subdivision of property.

The Mohammadans of Patna further remark that "the question is between a system of entails (a sort of primogenitive succession under the name and color of *wakf*) and an equitable rule of division of property amongst relations of the same degree for whom the proprietor may naturally be presumed to have an equal amount of affection; much may be said on both sides of the question; even in England, where primogeniture as a general rule of inheritance has prevailed for ages, the rule is not equally in favor with all classes—its equitable nature is undoubtedly a matter of question." There is no doubt that the principles of primogeniture and entails is not in favor with the present generation of English statesmen. But because a law is unsuited to England in the present day it is not necessary that it should be unsuited to India. As I have already observed the conditions of Mohammadan social life in India are so very different from those of the social life of England that Englishmen may very

well dispense with measures which are absolutely necessary for the welfare of Indian Mohammadans.

It must be admitted, however, that the measure framed by Seiyed Ahmed Qhaan proposed a compulsory devolution of property after an estate has once been brought on the Register of *wakfs*—consequently it leaves no scope, as the Mohammadans of Patna complain, to considerations of affection, convenience or justice. What the Mohammadans of Bengal' need and what they demand is a law enabling them to bequeath property. A law of wills is entirely permissive; it confers a right which may or may not be exercised.

While the law proposed by Seiyed Ahmed Qhaan prescribed an invariable rule of inheritance in the case of *wakfs* or *settled estates*, a law of bequests is a rule which enables property to be *devised* or *settled* anew at every stage of succession and thus with greater regard to the testator's feelings — with greater regard to the justice of the case. As proposed by Seiyed Ahmed Qhaan the law itself will make an eldest son for each *wakf* or estate, but as proposed in this Essay a father will be free to make an eldest son if he likes, but the law will not make an eldest son for him.

The power of making posthumous dispositions of property, moreover, enables the testator to take into consideration the capacity and character of all his sons, and may thus be exercised not only with greater regard to the justice of the case but also with greater regard to ultimate results, moral and material. The

Mohammadan in making a will, as in taking interest for money lent would be merely exercising a power which he uses on his own responsibility — the State in granting to him such a right does not impose upon him any obligation or duty. No Mohammadan will at all be bound to make a will and therefore the action of the State in conferring upon him the right to make a will cannot be an interference with his Religion even under the most bigoted interpretation.

Regulation 11 of 1793, Regulation 44 of 1795, and Regulation 10 of 1800, prove that the Mohammadan Government itself modified the law of succession by restricting the inheritance of landed property to single heirs, and the British Government need not be afraid of legalizing for the Mohammadans of India a practice which their own Government had thought fit to promote. If the Government should hesitate to give us a law of wills all at once, let it make a beginning on a small scale—let it confer the power of making wills at present on those who reside within the capital cities of the various provinces of India where trade and commerce are most active—and then after a while let it extend the provision to all Indian Mohammadans. But it must not recede against the opposition of begging priests and penniless Maolavees—it must not permit the further decline of the Mohammadan community—it must not allow the decay of Mohammadan society to be a standing reproach in its administration of India.

THE PRINCIPLES OF A BILL TO DECLARE THE LAW OF FAMILY ENDOWMENTS AMONG THE MOHAMMADANS OF INDIA.

WHEREAS it is expedient to declare the law of filial *wakfs* among the Mohammadans of India : It is enacted as follows :—

This Act shall be called the Mohammadan Family Settlement Act of 1882, and it shall prevail in those parts of British India to which it may be extended by Local Governments. Provided that the Notification promulgating the Act should be published in the Local Gazette at least three months before it comes into force.

Every Mohammadan may settle all or any of his property on (himself or) any of his heirs for their benefit.

When any person appropriates or settles his property for the benefit of all or some of his heirs, he should draw up a deed which shall specify the several estates that he has so appropriated.

The appropriator shall at the same time that he draws up the deed of settlement appoint himself or the beneficiary heir, the Motavalli or Manager, with power to nominate a successor in the management of the Trust.

If a Manager or Motavalli should at any time fail to appoint a successor, the person who is entitled to the largest share of the property under the ordi-

nary laws of inheritance shall succeed in the management of the Trust.

If such a person is a minor or a woman the *wakf* or settlement shall become invalid and the property shall be divided among the heirs of the deceased Motavalli according to the laws of intestate succession, unless the ostensible heirs agree in appointing a new Motavalli.

The Motavalli shall appoint his successor by means of a written will, and he shall have the power of altering it by another will or by a codicil ; and the will and codicil should be filed and registered in accordance with the law for the registration of assurances.

The provisions of the Law of Trusts will be applicable to all property appropriated under this Act, whether movable or immovable, and the Motavalli or Manager shall be liable to ejectment and damages.

If a Motavalli or Manager be ejected for malversation, the property shall be divided in accordance with the law of intestate and ordinary inheritance, unless the ostensible heirs agree in appointing a new Manager.

When a person has appropriated his property under this Act, he should apply to the Civil Judge with the deed of appropriation applying for the confirmation of the deed, and the Judge shall issue a proclamation and publish it upon all the estates specified in the deed.

A month after the publication of the notice the Judge shall hear objections on the part of those who

have a previous lien on any of the estates and shall confirm the deed in respect of all or some of the estates specified in the deed.

After the Judge has confirmed the deed it shall be registered as confirmed by the Judge in the Office of the Registrar of Assurances.

THE PRINCIPLES OF A BILL TO EXTEND THE TESTAMENTARY PROVISIONS OF THE INDIAN SUCCESSION ACT TO THE MOHAMMADANS OF INDIA.

WHEREAS it is expedient to enable the Mohammadans of India to make testamentary dispositions of property: It is enacted as follows :—

This Act shall be called the Mohammadan Legacy or Wills Act of 1882, and it shall come into force in such places as the Local Government may direct.

Provided that the notification should be published in the Local Gazette at least three months before the date on which it comes into operation.

Notwithstanding anything contained in the Indian Succession Act any Mohammadan may make testamentary dispositions of the whole or part of his property, and the testamentary provisions of the said Act and all laws for probates and administrations shall apply to bequests made by Mohammadans.

THE

MOHAMMADAN LAW OF SUCCESSION.

PART II.

1886.

If we examine the condition of the two communities into which India is divided, we find that, though living under the same Government, one is advancing in wealth, social position, and political importance, while the other is declining. What is the reason of this difference? What is the reason that, while Hindu families maintain their position for ages, Mohammadan families cannot maintain it even for two or three generations? What is the reason that while members of the Hindu community can become bankers, shipowners, merchants, and large traders, no Mohammadan possesses sufficient capital, or can ever hope to be more than a retail dealer or petty trader?

If we compare the various classes of our community, if we compare classes governed by particular customs with classes forming the general body of Mohammadans, we find that the Maemans and the Qhojas, for instance, are advancing in wealth and position, while the general community is declining. Nowhere, except in Bombay, are there large merchants among the domiciled or native Mohammadans of India, and nowhere, except in Bombay, are the

Mohammadans of India governed by customs foreign to their laws of inheritance. The inference must, therefore, be that the Mohammadan law of succession is unfavourable, at least in India, to the development of capital and the preservation of property.

I have, indeed, been long of opinion that the decline of the Mohammadans of India, if not elsewhere, is principally due to the compulsory subdivision of a man's property after his death. In no Mohammadan country have means been ever found to evolve a constitutional form of government. The compulsory division of property prevents the formation of a territorial aristocracy, and there is no power capable of controlling the sovereign. His authority being unlimited, he feels no necessity of calling a parliament of representatives either to impose taxes or to alter laws. As is inevitable in a hereditary form of government, good sovereigns are much fewer than bad, and the country declines after a certain stage of progress.

The absence of a territorial aristocracy also leaves the country exposed to foreign invasions. There is no power capable of organising a national resistance, or assisting the sovereign against the attacks of enemies. So that the subdivision of property affects the country, both as regards its own internal development and its relation to neighbouring countries; both as regards national progress and national independence.

The same results are appearing in India, though the shape they take is necessarily different. Mo-

hammadans are declining in wealth, knowledge and ability, and the time is not far distant when they must be content to accept a subordinate position among the units which constitute the social organisation of India.

The increasing poverty which is the inevitable result of our law of succession, is leading families here and classes there to try to evade its operation. Rich families in the Lower Provinces are every now and then providing against the minute subdivision of their property; the Ta'lukdaars of Awodh have already got a law securing succession to a single heir; and Seiyed Ahmed Qhaan sought to provide a law for the entire community calculated to secure succession in a single line. He failed because the feeling for such a law is not yet sufficiently strong; but it cannot now be denied by any Mohammadan who has studied the ideas or aspirations of his brethren that the increasing degradation of our social and political position is rapidly bringing us to an united feeling in favour of the repeal of our laws of inheritance in substance if not in form.

A part of the Maeman community have lately manifested a desire to adopt the Mohammadan law in matters of inheritance, and a Bill was introduced into the Legislative Council of India to give effect to their desire. If they succeed in bringing themselves under the Mohammadan Law in matters of inheritance, their social position and political importance will be seriously affected, and a few years will suffice to make

them rue the day when they gave up the law in which they had been bred and had prospered. I believe the Mohammadans of India have arrived at a critical position—a position demanding careful and attentive consideration, but I trust no action will be taken in regard to any class of the Mohammadan community without full discussion of its probable consequences. Why do the Maemans seek to adopt a law in which we ourselves are gradually coming to feel the necessity of a reform ? Why do they seek to repudiate a law by which they have been enabled to escape the general misery that has overtaken our race ?

They demand the change, they say, for two reasons: they desire to provide for widows and daughters, and they are ashamed to acknowledge that, being Mohammadans, they should be governed by the Hindu law of succession. But laws are made or changed only to promote human welfare, and a Mohammadan need feel no derogation or reproach in being governed on certain points by the customs of Hindu law, if more conducive to happiness than the ordinances of Mohammadan law. Among the Moslem gentry of Belgraam, a daughter gets no share of her father's property except maintenance, and the Belgraam family form a clan of Seiyeds by male line. It is a false delicacy which makes the Maeman ashamed of being governed by the Hindu law of succession.

In regard to the other reason, the early history of every civilised country proves that, in the beginning of

civilisation, daughters have always been portionless. It is only when civilisation has far advanced, when habits of energy and prudence have become organic in the human constitution, when it is no longer of importance whether wealth devolved on a single heir or was divided among many heirs—it is then that the question arises whether daughters should obtain a share of their father's wealth. But the Mohammadans of India are yet almost in the infancy of civilisation, and it would be dangerous for Maemans to fritter away their importance and to court eventual misery by a fanciful and immediate redress of inequality.

If the Maemans of Kach desire to provide for widows and daughters, they have even now means of doing so with ease. It has been judicially found that they are governed by Hindu law in matters of succession ; this law enables them to make testamentary dispositions of their property. Let them make bequests in favour of widows and daughters, and satisfy their conscience. If the Hindu Wills Act does not apply to the Maeman, he can still make a bequest under the Mohammadan law, and the third share, which that law allows to be bequeathed, will be found amply sufficient for the children of the daughter whom he might otherwise leave in a portionless state. For the widow he can, if he desires, make a provision during his own lifetime.

Among Hindus daughters receive no share and yet

the Hindu community is advancing ; among Mohammadans daughters receive a considerable share, and yet the Mohammadan community is declining. If we eliminate the consequences of their inability to remarry, I challenge any Mohammadan to prove that the condition of women among our neighbours is worse than among ourselves—not theoretically but practically. It is children born of Hindu women that are supplanting those of Mohammadan women from the ranks of the public service — it is the children of Hindu women that are driving away those of Mohammadan women from every department of human activity. I cannot, therefore, deplore or look with compassion on the condition of women governed by the Hindu law of inheritance.

Let the Maemans of Kach pause before they repudiate a law which alone has enabled them to escape the general misery that has overtaken the Mohammadan community of India. Do they suppose that, if every time that a Maeman dies his property should be divided, they will ever be able to amass sufficient capital to engage in large undertakings ? Do they believe that, if they fail hereafter to engage in large undertakings, they will be able to maintain the position which the possession of large capitals alone has given them ? Do they think that the inability to engage in large undertakings and the continual subdivision of capital will not lead them to a rapid course of decline, or will not, in two or three generations and less than a cen-

tury, bring them down to the level of the Mohammadans of the Lower Provinces? And does Mr. Ameer Ali hope that the degradation of the Maeman community will not seriously affect the political importance of the Mohammadan community at large?—a community that have not yet seen the way to retrace their downward course. While there is still time let the Maemans reconsider the question they have raised, and retire from the position they have taken—a position fraught with perilous consequences not only to themselves, but to the entire Mohammadan community of India.

If the Maemans persist in adopting the Mohammadan law let the Bill be re-cast. As at present framed it keeps them subject to Hindu law in matters of succession, but allows every member of the community to bring himself under the Mohammadan law of succession by making a declaration in a particular form. The majority of them, however, dislike the necessity of making such a declaration, and wish to throw the burden on those who like to be governed by Hindu law in matters of succession.

Let the Bill be re-cast in this shape and let the present opportunity be taken advantage of to provide relief to those dissenting Mohammadans who, whether Maemans or Qhojas, or belonging to the general body of our community, do not wish to be governed by the Mohammadan law of succession.

Tho' the Mohammadan Shara' is said to be a set

of divinely revealed laws and therefore unalterable by direct enactment, the history of Mohammadan jurisprudence proves that it has often been changed by indirect ordinances and by case law. Regulation 11 of 1793, Regulation 44 of 1795, and Regulation 10 of 1800, prove that the Mogal Government not only allowed the landlord but often made it obligatory on him to vest the management of his estate in a single heir. While judge-made law is represented by the various *heelehs* or pretexts which have been allowed to override the Shara' and by the numerous *fatwehs* or decisions that have been reported and handed down as precedents.

We have now no means of modifying any of our personal laws even if we are convinced of its evil consequences in India. European judges, unlike Mr. Justice Scott of Bombay, are generally too sensitive of interfering with our customs, and seldom care to follow the spirit or tendencies of the age. As witness Rukmin Baiy's case decided in Bombay in 1886 or 1887. European judges decide all causes that come up for determination in accordance with the strict letter of the law, and their Indian subordinates follow the same illiberal interpretation, thus putting a barrier against all attempt to deviate from prevailing customs.

So that we are unable to make *wakfs* upon children or family settlements of our property —unable to make bequests or testamentary dispositions of our

property — we have lost our wealth and with it we have lost our social position, and therefore our political importance.

All the effort that we are making to improve our political importance by improvising measures for our educational progress in schools and colleges, and for our admission into the service of the State—all this effort is labor lost to our community. For the history of every civilized country proves that political importance is the consequence of social advancement, and no community or class of people can improve their social position without bettering their material and economical condition: in other words, without accumulating and preserving wealth.

The descendants of the Raajas of the Mogal Empire, of Raajas like Maan Singh and Jeswant Singh, are still great peers and landholders after the lapse of more than two centuries; because their political importance had its root in their social power—because the custom of primogeniture which obtained among them saved their wealth from decay.

But where are the descendants of those great Ameers and Mohammadan nobles who often defied the authority of the Mogal Emperor? Where are the descendants of the Aasaf Qhaans and the AbdAllah Qhaans, the Qhaan Qhaanans and the Qhaan A'zams, who made and unmade Kings? They have all lost their political consequence, because it was not founded on social influence, because the custom of subdivision

of property which prevailed among them rapidly dissipated their wealth.

The time has come when the defects of our social organization must no longer be ignored, and when it is incumbent upon all lovers of Islaam to fearlessly point out those defects, be the consequences what they may.

We are unable to preserve wealth, because we are unable to make family settlements or testamentary dispositions of our property. The sure expectancy of a share of his father's property naturally makes the Mohammadan unwilling to exert all his powers or unable to put forth all his efforts in grappling with the difficulties of life, and prevents him from acquiring that education and training which the unaided exercise of the faculties alone can give, and which form the only sure foundation of social advancement.

The consequence is that we are unable to preserve our wealth or improve our social position, because the extravagant habits which the Mohammadan learns during his father's life-time makes him improvident after his father's death.

We are also unable to acquire wealth. Because wealth is accumulated by trade and commerce, because trading and commercial speculations require large capitals, and because the compulsory subdivision of assets amongst us prevents the continuance of large capitals.

No community can be said to be progressing in which persons born and bred among the lower orders

do not every now and then rise to social eminence. This rise can be achieved only by means of trade and commerce. But the breaking up of a firm or concern which is the inevitable result of the subdivision of property among us prevents Mohammadan merchants and traders from securing any permanent place among the higher classes.

It is probably an intuitive perception of this mischief that makes the Qhoja community adhere to the Hindu law of undivided family in connection with trading and mercantile undertakings, as hinted in para. 11 of the Objects and Reasons attached to the Qhoja Succession Bill of 1884 ; and it is probably the same intuitive perception of the advantages of the law of undivided family that has persuaded the Maeman community of traders and merchants to be governed by the Hindu law of succession—the law which they are now rashly and recklessly trying to evade.

There is abundant evidence to prove that the Mohammadan law of minute subdivisions has come to be disliked by every section of the Mohammadan community. Not only Mohammadan landlords but also petty squires and even small farmers are now having recourse to defeat the law with various pretexts or *heelehs* by making *hebehs*, *tamleek naamas*, *wakfs* on children, or *wakfs* for religious purposes. The Government must now come forward and legalize these *heelehs* or evasions, and enable the Mohammadan community to retrace its downward course. We have now no

other means of legalizing deviations from the law of compulsory subdivisions. The Government alone can do so. It calls itself a liberal government, it is a government which prides itself on the freedom of action that it gives to its subjects. It must come forward and give the dissenting portion of our community the freedom to follow their own inclinations in matters of succession, the liberty to make family settlements or testamentary dispositions of our property.

Let it frame a Bill on these lines capable of satisfying both the orthodox and the dissenting sects, of satisfying those who wish to follow the rules laid down by the old Jurists of Bagdaad, and those who wish to follow the tendencies of the present age. The Bill which I append to these pages is calculated to set at rest the prejudices of the most bigotted Mohammadan, and will at the same time enable the *Mo'tazlehs* or dissenters from orthodox rules to follow their own inclinations. And it is on the lines of such a Bill that the Legislature should alter the Qhoja as well as the Maeman Bill, and thus make it a law applicable to the entire Mohammadan community be they Sunni or Wahaabi, Shee'a or Qhaareji, Mokalled or Mo'tazeleh.

A BILL TO DECLARE THE LAW OF SUCCESSION AMONG THE MOHAMMADANS OF INDIA.

WHEREAS there are certain classes of persons among the Mohammadan Community of India like the Maemans and the Qhojas in regard to whom questions have from time to time arisen as to the law by which they are governed in matters of succession, and whereas some of these persons abovementioned desire to be governed in such matters by the Mohammadan law as expounded by the Doctors of their School ;

And whereas it is also expedient that those persons among the Mohammadan Community who do not wish to be governed by the Mohammadan law in matters of succession should be allowed to elect the law which they desire to be applied to them in such matters ;

It is enacted as follows :—

1. This Act may be called the Mohammadan Succession Act of 1886.

2. It is hereby ordained that every Mohammadan domiciled in British India is and shall be governed in matters of succession by the Mohammadan law as expounded by the Doctors of the School to which he belongs, and that the Mohammadan law so expounded does and shall apply to him in such matters in all parts of India, British and Tributary.

3. Any Mohammadan who is domiciled in British India and who desires not to be governed by Mohammadan law in matters of succession may make a de-

claration as nearly as possible in the form given in the schedule annexed to this Act, and when he has made such a declaration in the manner hereinafter provided, he shall be governed in matters of succession by the Rules and Customs of Hindu law if he makes the first declaration, or by the law in regard to testamentary succession being in force for the time among those classes and communities of British India who are neither Mohammadans, Hindus, Buddhists, Jaens, nor Sikhs, if he makes the second declaration.

4. The declaration mentioned in Section 3 must be made by a written instrument under the hand of the person making the same in the form given in the schedule attached to this Act or in a form to the like effect, and must, (a) if made in a part of British India in which the law for the time being regarding the registration of assurances is in force, be registered during his lifetime in accordance with that law; and (b) if made elsewhere, be executed before a Notary Public or a Court, Judge, Magistrate, British Consul or Vice-Consul, or a representative of Her Majesty or of the Government of India.

5. If the inmediate or a remote successor of a Mohammadan who may have made the 1st or the 2nd declaration, should desire to revert to the Mohammadan law, he may make the 3rd declaration attached to the Schedule. If he makes such a declaration, he must also make it in the manner provided by Section 4.

THE SCHEDULE.

Form of Declaration No. 1.

I hereby declare that I do not wish to gover by Mohammadan Law in matters of succession.

No. 2.

I hereby declare that I wish to be governed matters of testamentary succession by the Indian S cession Act of 188 .

No. 3.

I hereby declare that I desire to revert to the . hammadan Law in matters of intestate or testament succession, or intestate and testamentary success and to be governed in such matters by the Moham dan Law as expounded by the school.